

S. 5844

A. 8510

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

June 22, 2011

IN SENATE -- Introduced by Sens. MAZIARZ, PARKER, GRISANTI -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. CAHILL, SILVER, FARRELL, KOLB, AMEDORE, WEISENBERG, ZEBROWSKI, ROBERTS, SPANO, GABRYSZAK, CRESPO, ENGLEBRIGHT, FINCH, FRIEND, HEVESI, LINARES, MOYA, ROSENTHAL, SIMOTAS, CYMBROWITZ, BRENNAN, LUPARDO -- (at request of the Governor) -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, the public authorities law, the real property law, the state finance law, and the environmental conservation law, in relation to establishing the power NY act of 2011

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "power NY
2 act of 2011".
3 S 2. Subdivision 2 of section 18-a of the public service law is
4 amended by adding a new paragraph (h) to read as follows:
5 (H) ON-BILL RECOVERY CHARGES BILLED PURSUANT TO SECTION SIXTY-SIX-M OF
6 THIS CHAPTER SHALL BE EXCLUDED FROM ANY DETERMINATION OF AN ENTITY'S
7 GROSS OPERATING REVENUES DERIVED FROM INTRASTATE UTILITY OPERATIONS FOR
8 PURPOSES OF THIS SECTION.
9 S 3. Section 42 of the public service law is amended by adding a new
10 subdivision 3 to read as follows:
11 3. THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL CUSTOMERS PARTIC-
12 IPATING IN GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY PURSUANT TO
13 SECTION SIXTY-SIX-M OF THIS CHAPTER SHALL BE SUBSTANTIALLY COMPARABLE TO
14 THOSE OF ELECTRIC AND GAS CUSTOMERS NOT PARTICIPATING IN ON-BILL RECOV-
15 ERY, AND CHARGES FOR ON-BILL RECOVERY SHALL BE TREATED AS CHARGES FOR
16 UTILITY SERVICE FOR THE PURPOSE OF THIS ARTICLE, PROVIDED THAT:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD12069-07-1

1 (A) ALL DETERMINATIONS AND SAFEGUARDS RELATED TO THE TERMINATION AND
2 RECONNECTION OF SERVICE SHALL APPLY TO ON-BILL RECOVERY CHARGES BILLED
3 BY A UTILITY PURSUANT TO SUCH SECTION;

4 (B) IN THE EVENT THAT THE RESPONSIBILITY FOR MAKING UTILITY PAYMENTS
5 HAS BEEN ASSUMED BY OCCUPANTS OF A MULTIPLE DWELLING PURSUANT TO SECTION
6 THIRTY-THREE OF THIS ARTICLE OR BY OCCUPANTS OF A TWO-FAMILY DWELLING
7 PURSUANT TO SECTION THIRTY-FOUR OF THIS ARTICLE, SUCH OCCUPANTS SHALL
8 NOT BE BILLED FOR ANY ARREARS OF ON-BILL RECOVERY CHARGES OR ANY
9 PROSPECTIVE ON-BILL RECOVERY CHARGES, WHICH SHALL REMAIN THE RESPONSI-
10 BILITY OF THE INCURRING CUSTOMER;

11 (C) DEFERRED PAYMENT AGREEMENTS PURSUANT TO SECTION THIRTY-SEVEN OF
12 THIS ARTICLE SHALL BE AVAILABLE TO CUSTOMERS PARTICIPATING IN ON-BILL
13 RECOVERY ON THE SAME TERMS AS OTHER CUSTOMERS, AND THE UTILITY SHALL
14 RETAIN THE SAME DISCRETION TO DEFER TERMINATION OF SERVICE AS FOR ANY
15 OTHER DELINQUENT CUSTOMER;

16 (D) WHERE A CUSTOMER HAS A BUDGET BILLING PLAN OR LEVELIZED PAYMENT
17 PLAN PURSUANT TO SECTION THIRTY-EIGHT OF THIS ARTICLE, THE UTILITY SHALL
18 RECALCULATE THE PAYMENTS UNDER SUCH PLAN TO REFLECT THE PROJECTED
19 EFFECTS OF INSTALLING ENERGY EFFICIENCY MEASURES AS SOON AS PRACTICABLE
20 AFTER RECEIPT OF INFORMATION ON THE ENERGY AUDIT AND QUALIFIED ENERGY
21 EFFICIENCY SERVICES SELECTED;

22 (E) ON-BILL RECOVERY CHARGES SHALL NOT BE SUBJECT TO THE PROVISIONS OF
23 SECTION FORTY-ONE OF THIS ARTICLE;

24 (F) LATE PAYMENT CHARGES ON UNPAID ON-BILL RECOVERY CHARGES SHALL BE
25 DETERMINED AS PROVIDED IN THIS SECTION, OR AS OTHERWISE CONSENTED TO BY
26 THE CUSTOMER IN THE AGREEMENT FOR GREEN JOBS-GREEN NEW YORK ON-BILL
27 RECOVERY AND ANY SUCH CHARGES SHALL BE REMITTED TO THE NEW YORK STATE
28 ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;

29 (G) NOTWITHSTANDING THE PROVISIONS OF SECTION FORTY-THREE OF THIS
30 ARTICLE, WHEN A COMPLAINT IS RELATED SOLELY TO WORK PERFORMED UNDER THE
31 GREEN JOBS-GREEN NEW YORK PROGRAM OR TO THE APPROPRIATE AMOUNT OF
32 ON-BILL RECOVERY CHARGES, THE UTILITY SHALL ONLY BE REQUIRED TO INFORM
33 THE CUSTOMER OF THE COMPLAINT HANDLING PROCEDURES OF THE NEW YORK STATE
34 ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, WHICH SHALL RETAIN RESPONSI-
35 BILITY FOR HANDLING SUCH COMPLAINTS, AND SUCH COMPLAINTS SHALL NOT BE
36 DEEMED TO BE COMPLAINTS ABOUT UTILITY SERVICE IN ANY OTHER COMMISSION
37 ACTION OR PROCEEDING; AND

38 (H) BILLING INFORMATION PROVIDED PURSUANT TO SECTION FORTY-FOUR OF
39 THIS ARTICLE SHALL INCLUDE INFORMATION ON GREEN JOBS-GREEN NEW YORK
40 ON-BILL RECOVERY CHARGES, INCLUDING THE BASIS FOR SUCH CHARGES, AND ANY
41 INFORMATION OR INSERTS PROVIDED BY THE NEW YORK STATE ENERGY RESEARCH
42 AND DEVELOPMENT AUTHORITY RELATED THERETO. IN ADDITION, AT LEAST ANNUAL-
43 LY THE AUTHORITY SHALL PROVIDE THE UTILITY WITH INFORMATION FOR INCLU-
44 SION OR INSERTION IN THE CUSTOMER'S BILL THAT SETS FORTH THE AMOUNT AND
45 DURATION OF REMAINING ON-BILL RECOVERY CHARGES AND THE AUTHORITY'S
46 CONTACT INFORMATION AND PROCEDURES FOR RESOLVING CUSTOMER COMPLAINTS
47 WITH SUCH CHARGES.

48 S 4. Paragraph (d) of subdivision 6 of section 65 of the public
49 service law, as added by chapter 204 of the laws of 2010, is amended to
50 read as follows:

51 (d) for installation of capital improvements and fixtures to promote
52 energy efficiency upon the request and consent of the customer, INCLUD-
53 ING BUT NOT LIMITED TO THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY
54 SERVICES FOR CUSTOMERS PARTICIPATING IN GREEN JOBS-GREEN NEW YORK
55 ON-BILL RECOVERY PURSUANT TO SECTION SIXTY-SIX-M OF THIS ARTICLE.

1 S 5. The public service law is amended by adding a new section 66-m
2 to read as follows:

3 S 66-M. GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY. 1.(A) THE COMMIS-
4 SION SHALL, WITHIN FORTY-FIVE DAYS OF THE EFFECTIVE DATE OF THIS
5 SECTION, COMMENCE A PROCEEDING TO INVESTIGATE THE IMPLEMENTATION BY EACH
6 COMBINATION ELECTRIC AND GAS CORPORATION HAVING ANNUAL REVENUES IN
7 EXCESS OF TWO HUNDRED MILLION DOLLARS OF A BILLING AND COLLECTION
8 SERVICE FOR ON-BILL RECOVERY CHARGES IN PAYMENT OF OBLIGATIONS OF ITS
9 CUSTOMERS TO THE GREEN JOBS-GREEN NEW YORK REVOLVING LOAN FUND ESTAB-
10 LISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORI-
11 TIES LAW AND, WITHIN ONE HUNDRED FIFTY DAYS OF THE EFFECTIVE DATE OF
12 THIS SECTION, THE COMMISSION SHALL MAKE A DETERMINATION ESTABLISHING THE
13 BILLING AND COLLECTION PROCEDURES FOR SUCH ON-BILL RECOVERY CHARGES. THE
14 DEPARTMENT SHALL CONSULT WITH THE NEW YORK STATE ENERGY RESEARCH AND
15 DEVELOPMENT AUTHORITY IN THE PREPARATION OF ITS RECOMMENDATIONS TO THE
16 COMMISSION FOR SUCH DETERMINATION. THE COMMISSION SHALL REQUIRE SUCH
17 ELECTRIC AND GAS CORPORATIONS TO OFFER BILLING AND COLLECTION SERVICES
18 FOR GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGES FOR ELIGIBLE
19 CUSTOMERS WITHIN THREE HUNDRED DAYS OF THE EFFECTIVE DATE OF THIS
20 SECTION. TO THE EXTENT PRACTICABLE, SUCH ELECTRIC AND GAS CORPORATIONS
21 SHALL UTILIZE EXISTING ELECTRONIC DATA INTERCHANGE INFRASTRUCTURE OR
22 OTHER EXISTING BILLING INFRASTRUCTURE TO IMPLEMENT THEIR BILLING AND
23 COLLECTION RESPONSIBILITIES UNDER THIS SECTION, AND SHALL UTILIZE FUND-
24 ING AVAILABLE FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
25 AUTHORITY TO DEFRAY ANY COSTS ASSOCIATED WITH ELECTRONIC DATA INTER-
26 CHANGE IMPROVEMENTS OR OTHER COSTS OF INITIATING AND IMPLEMENTING THIS
27 PROGRAM.

28 (B) TO ENSURE PROPER PROGRAM DESIGN AND IMPLEMENTATION, EACH ELECTRIC
29 AND GAS CORPORATION SHALL INITIALLY LIMIT THE NUMBER OF CUSTOMERS WHO
30 PAY A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE AT ANY GIVEN
31 TIME TO NO MORE THAN ONE HALF OF ONE PERCENT OF ITS TOTAL CUSTOMERS, ON
32 A FIRST COME, FIRST SERVED BASIS. PRIOR TO REACHING SUCH LIMIT, THE NEW
33 YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL PETITION THE
34 COMMISSION TO REVIEW SAID LIMIT, AND THE COMMISSION SHALL INCREASE SUCH
35 LIMIT PROVIDED THAT THE COMMISSION FINDS THAT THE PROGRAM HAS NOT CAUSED
36 SIGNIFICANT HARM TO THE ELECTRIC OR GAS COMPANY OR ITS RATEPAYERS.

37 (C) THE COMMISSION MAY SUSPEND SUCH AN ELECTRIC AND GAS CORPORATION'S
38 OFFERING OF THE ON-BILL RECOVERY CHARGE PROVIDED THAT THE COMMISSION,
39 AFTER CONDUCTING A HEARING AS PROVIDED IN SECTION TWENTY OF THIS CHAP-
40 TER, MAKES A FINDING THAT THERE IS A SIGNIFICANT INCREASE IN ARREARS OR
41 UTILITY SERVICE DISCONNECTIONS THAT THE COMMISSION DETERMINES IS DIRECT-
42 LY RELATED TO THE ON-BILL RECOVERY CHARGE, OR A FINDING OF OTHER GOOD
43 CAUSE.

44 (D) THE ON-BILL RECOVERY CHARGE SHALL BE COLLECTED ON THE BILL FROM
45 THE CUSTOMER'S ELECTRIC CORPORATION UNLESS THE QUALIFIED ENERGY EFFI-
46 CIENCY SERVICES AT THAT CUSTOMER'S PREMISES RESULT IN MORE PROJECTED
47 ENERGY SAVINGS ON THE CUSTOMER'S GAS BILL THAN THE ELECTRIC BILL, IN
48 WHICH CASE SUCH CHARGE SHALL BE COLLECTED ON THE CUSTOMER'S GAS CORPO-
49 RATION BILL.

50 (E) THE COMMISSION SHALL DETERMINE AN APPROPRIATE PERCENTAGE, UP TO
51 FIFTEEN PERCENT, OF THE ENERGY SAVINGS FROM QUALIFIED ENERGY EFFICIENCY
52 SERVICES, FINANCED WITH A LOAN PURSUANT TO SECTION EIGHTEEN HUNDRED
53 NINETY-SIX OF THE PUBLIC AUTHORITIES LAW THAT IS SUBJECT TO AN ON-BILL
54 RECOVERY CHARGE, TO BE CREDITED TO THE COMBINATION ELECTRIC AND GAS
55 CORPORATION THAT IS ISSUING THE BILL FOR SUCH CHARGE, FOR PURPOSES OF

MEETING SUCH CORPORATION'S TARGETS UNDER ENERGY EFFICIENCY PROGRAMS ESTABLISHED BY THE COMMISSION.

2. SCHEDULES FOR THE COLLECTION AND BILLING OF ON-BILL RECOVERY CHARGES SHALL PROVIDE:

(A) THAT BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE TO ALL CUSTOMERS WHO HAVE MET THE STANDARDS ESTABLISHED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR PARTICIPATION IN THE ON-BILL RECOVERY MECHANISM UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM AND HAVE EXECUTED AN AGREEMENT FOR THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES UNDER SUCH PROGRAM; PROVIDED, HOWEVER, THAT FOR RESIDENTIAL PROPERTIES ANY SUCH CUSTOMER MUST HOLD PRIMARY OWNERSHIP OR REPRESENT THE PRIMARY OWNER OR OWNERS OF THE PREMISES AND HOLD PRIMARY METER ACCOUNT RESPONSIBILITY OR REPRESENT THE PRIMARY HOLDER OR HOLDERS OF METER ACCOUNT RESPONSIBILITY FOR ALL METERS TO WHICH SUCH ON-BILL RECOVERY CHARGES WILL APPLY;

(B) THAT THE RESPONSIBILITIES OF SUCH ELECTRIC AND GAS CORPORATION ARE LIMITED TO PROVIDING BILLING AND COLLECTION SERVICES FOR ON-BILL RECOVERY CHARGES AS DIRECTED BY THE AUTHORITY;

(C) THAT THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL CUSTOMERS PAYING ON-BILL RECOVERY CHARGES SHALL BE GOVERNED BY THE PROVISIONS OF ARTICLE TWO OF THIS CHAPTER;

(D) UNLESS FULLY SATISFIED PRIOR TO SALE OR TRANSFER, THAT (I) THE ON-BILL RECOVERY CHARGES FOR ANY SERVICES PROVIDED AT THE CUSTOMER'S PREMISES SHALL SURVIVE CHANGES IN OWNERSHIP, TENANCY OR METER ACCOUNT RESPONSIBILITY, AND (II) THAT ARREARS IN ON-BILL RECOVERY CHARGES AT THE TIME OF ACCOUNT CLOSURE OR METER TRANSFER SHALL REMAIN THE RESPONSIBILITY OF THE INCURRING CUSTOMER, UNLESS EXPRESSLY ASSUMED BY A SUBSEQUENT PURCHASER OF THE PROPERTY SUBJECT TO SUCH CHARGES;

(E) NOT LESS THAN FORTY-FIVE DAYS AFTER CLOSURE OF AN ACCOUNT THAT IS SUBJECT TO AN ON-BILL RECOVERY CHARGE, AND PROVIDED THAT THE CUSTOMER DOES NOT RE-ESTABLISH SERVICE WITH SUCH ELECTRIC AND GAS CORPORATION, IT SHALL BE THE RESPONSIBILITY OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AND NOT THE ELECTRIC AND GAS CORPORATION TO COLLECT ANY ARREARS THAT ARE DUE AND OWING;

(F) A CUSTOMER REMITTING LESS THAN THE TOTAL AMOUNT DUE FOR ELECTRIC AND/OR GAS SERVICES AND ON-BILL RECOVERY CHARGES SHALL HAVE SUCH PARTIAL PAYMENT FIRST APPLIED AS PAYMENT FOR ELECTRIC AND/OR GAS SERVICES AND ANY REMAINING AMOUNT WILL BE APPLIED TO THE ON-BILL RECOVERY CHARGE;

(G) BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE WITHOUT REGARD TO WHETHER THE ENERGY OR FUEL DELIVERED BY THE UTILITY IS THE CUSTOMER'S PRIMARY ENERGY SOURCE;

(H) UNLESS OTHERWISE PRECLUDED BY LAW, PARTICIPATION IN THE GREEN JOBS-GREEN NEW YORK PROGRAM SHALL NOT AFFECT A CUSTOMER'S ELIGIBILITY FOR ANY REBATE OR INCENTIVE OFFERED BY A UTILITY; AND

(I) ANY OTHER PROVISIONS NECESSARY TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL RECOVERY CHARGES.

3. THE COMMISSION SHALL NOT APPROVE ANY APPLICATION FOR THE CONVERSION TO SUBMETERING OF ANY MASTER METER WHICH IS SUBJECT TO ANY ON-BILL RECOVERY CHARGES.

S 6. Sections 1020-hh, 1020-ii and 1020-jj of the public authorities law, as renumbered by chapter 433 of the laws of 2009, are renumbered sections 1020-ii, 1020-jj and 1020-kk and a new section 1020-hh is added to read as follows:

S 1020-HH. GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY. 1. WITHIN THREE HUNDRED DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE AUTHORITY SHALL ESTABLISH A PROGRAM TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL

1 RECOVERY CHARGES FOR PAYMENT OF OBLIGATIONS OF ITS CUSTOMERS TO THE
2 GREEN JOBS-GREEN NEW YORK REVOLVING LOAN FUND ESTABLISHED PURSUANT TO
3 TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. SUCH
4 PROGRAM SHALL BE CONSISTENT WITH THE STANDARDS SET FORTH IN SUBDIVISION
5 THREE OF SECTION FORTY-TWO AND SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE
6 LAW. TO THE MAXIMUM EXTENT PRACTICABLE, FUNDING AVAILABLE FROM THE NEW
7 YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL BE UTILIZED
8 TO DEFRAY ANY COSTS ASSOCIATED WITH ELECTRONIC DATA INTERCHANGE IMPROVE-
9 MENTS OR OTHER COSTS OF INITIATING AND IMPLEMENTING THIS PROGRAM. BILL-
10 ING AND COLLECTION SERVICES UNDER SUCH TARIFFS SHALL COMMENCE AS SOON AS
11 PRACTICABLE AFTER ESTABLISHMENT OF THE PROGRAM.

12 2. THE AUTHORITY MAY SUSPEND ITS OFFERING OF THE ON-BILL RECOVERY
13 CHARGE PROVIDED THAT THE AUTHORITY MAKES A FINDING THAT THERE IS A
14 SIGNIFICANT INCREASE IN ARREARS OR UTILITY SERVICE DISCONNECTIONS THAT
15 THE AUTHORITY DETERMINES IS DIRECTLY RELATED TO SUCH CHARGE, OR A FIND-
16 ING OF OTHER GOOD CAUSE.

17 S 7. Subdivision 5 of section 1891 of the public authorities law, as
18 added by chapter 487 of the laws of 2009, is amended to read as follows:

19 5. "Eligible project" means qualified energy efficiency services for a
20 non-residential structure, a residential structure or a multi-family
21 structure. AN ELIGIBLE PROJECT SHALL NOT BE CONSIDERED (A) A MAJOR
22 CAPITAL IMPROVEMENT PURSUANT TO SUBPARAGRAPH (G) OF PARAGRAPH ONE OF
23 SUBDIVISION G OF SECTION 26-405 OF THE ADMINISTRATIVE CODE OF THE CITY
24 OF NEW YORK, SUBPARAGRAPH (K) OF PARAGRAPH ONE OF SUBDIVISION G OF
25 SECTION 26-405 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, PARA-
26 GRAPH SIX OF SUBDIVISION C OF SECTION 26-511 OF THE ADMINISTRATIVE CODE
27 OF THE CITY OF NEW YORK, PARAGRAPH THREE OF SUBDIVISION D OF SECTION SIX
28 OF SECTION FOUR OF CHAPTER FIVE HUNDRED SEVENTY-SIX OF THE LAWS OF NINE-
29 TEEN HUNDRED SEVENTY-FOUR, AND THE SECOND UNDESIGNATED PARAGRAPH OF
30 PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION FOUR OF CHAPTER TWO HUNDRED
31 SEVENTY-FOUR OF THE LAWS OF NINETEEN HUNDRED FORTY-SIX; OR (B) AN INDI-
32 VIDUAL APARTMENT IMPROVEMENT PURSUANT TO SUBPARAGRAPH (E) OF PARAGRAPH
33 ONE OF SUBDIVISION G OF SECTION 26-405 OF THE ADMINISTRATIVE CODE OF THE
34 CITY OF NEW YORK, PARAGRAPH THIRTEEN OF SUBDIVISION C OF SECTION 26-511
35 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, PARAGRAPH ONE OF
36 SUBDIVISION D OF SECTION SIX OF SECTION FOUR OF CHAPTER FIVE HUNDRED
37 SEVENTY-SIX OF THE LAWS OF NINETEEN HUNDRED SEVENTY-FOUR, AND CLAUSE
38 FIVE OF THE SECOND UNDESIGNATED PARAGRAPH OF PARAGRAPH (A) OF SUBDIVI-
39 SION FOUR OF SECTION FOUR OF CHAPTER TWO HUNDRED SEVENTY-FOUR OF THE
40 LAWS OF NINETEEN HUNDRED FORTY-SIX.

41 S 7-a. Section 1894 of the public authorities law is amended by adding
42 a new subdivision 4 to read as follows:

43 4. ANY ORGANIZATION USING FUNDING PROVIDED UNDER THE PROGRAM FOR
44 MARKETING OR OTHER OUTREACH ACTIVITIES SHALL NOT COMMINGLE SUCH MARKET-
45 ING OR OUTREACH ACTIVITIES WITH ANY OTHER ADVOCACY OR POLICY PROMOTION
46 EFFORTS.

47 S 8. Section 1896 of the public authorities law, as added by chapter
48 487 of the laws of 2009, is amended to read as follows:

49 S 1896. Green jobs-green New York revolving loan fund. 1. (a) There is
50 hereby created a green jobs-green New York revolving loan fund. The
51 revolving loan fund shall consist of:

52 (i) all moneys made available for the purpose of the revolving loan
53 fund pursuant to section eighteen hundred ninety-nine-a of this title;

54 (ii) payments of principal and interest, INCLUDING ANY LATE PAYMENT
55 CHARGES, made pursuant to loan or financing agreements entered into with
56 the authority or its designee pursuant to this section; and

(iii) any interest earned by the investment of moneys in the revolving loan fund.

(b) The revolving loan fund shall consist of two accounts:

(i) one account which shall be maintained for monies to be made available to provide loans to finance the cost of approved qualified energy efficiency services for residential structures and multi-family structures, and

(ii) one account which shall be maintained for monies made available to provide loans to finance the cost of approved qualified energy efficiency services for non-residential structures. The initial balance of the residential account established in [clause] SUBPARAGRAPH (i) of this paragraph shall represent at least fifty percent of the total balance of the two accounts. The authority shall not commingle the monies of the revolving loan fund with any other monies of the authority or held by the authority, nor shall the authority commingle the monies between accounts. Payments of principal, interest and fees shall be deposited into the account created and maintained for the appropriate type of eligible project.

(c) In administering such program, the authority is authorized and directed to:

(i) use monies made available for the revolving loan fund to achieve the purposes of this section by section eighteen hundred ninety-nine-a of this title, including but not limited to making loans available for eligible projects;

(ii) enter into contracts with one or more program implementers to perform such functions as the authority deems appropriate; [and]

(iii) ESTABLISH AN ON-BILL RECOVERY MECHANISM FOR REPAYMENT OF LOANS FOR THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES FOR ELIGIBLE PROJECTS PROVIDED THAT SUCH ON-BILL RECOVERY MECHANISM SHALL PROVIDE FOR THE UTILIZATION OF ANY ON-BILL RECOVERY PROGRAMS ESTABLISHED PURSUANT TO SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE LAW AND SECTION ONE THOUSAND TWENTY-HH OF THIS CHAPTER;

(IV) ESTABLISH STANDARDS FOR CUSTOMER PARTICIPATION IN SUCH ON-BILL RECOVERY MECHANISM, INCLUDING STANDARDS FOR RELIABLE UTILITY BILL PAYMENT, CURRENT GOOD STANDING ON ANY MORTGAGE OBLIGATIONS, AND SUCH ADDITIONAL STANDARDS AS THE AUTHORITY DEEMS NECESSARY; PROVIDED THAT IN ORDER TO PROVIDE BROAD ACCESS TO ON-BILL RECOVERY, THE AUTHORITY SHALL, TO THE FULLEST EXTENT PRACTICABLE, CONSIDER ALTERNATIVE MEASURES OF CREDITWORTHINESS THAT ARE PRUDENT IN ORDER TO INCLUDE PARTICIPATION BY CUSTOMERS WHO ARE LESS LIKELY TO HAVE ACCESS TO TRADITIONAL SOURCES OF FINANCING;

(V) TO THE EXTENT FEASIBLE, MAKE AVAILABLE ON A PRO RATA BASIS, BASED ON THE NUMBER OF ELECTRIC CUSTOMERS WITHIN THE UTILITY SERVICE TERRITORY, TO COMBINATION ELECTRIC AND GAS CORPORATIONS THAT OFFER ON-BILL RECOVERY PURSUANT TO SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE LAW AND THE LONG ISLAND POWER AUTHORITY, UP TO FIVE HUNDRED THOUSAND DOLLARS TO DEFRAY COSTS DIRECTLY ASSOCIATED WITH CHANGING OR UPGRADING BILLING SYSTEMS TO ACCOMMODATE ON-BILL RECOVERY CHARGES;

(VI) WITHIN THIRTY DAYS OF CLOSING OF A LOAN TO A CUSTOMER, PAY A FEE OF ONE HUNDRED DOLLARS PER LOAN TO THE COMBINATION ELECTRIC AND GAS CORPORATION IN WHOSE SERVICE TERRITORY SUCH CUSTOMER IS LOCATED OR TO THE LONG ISLAND POWER AUTHORITY IF SUCH CUSTOMER IS LOCATED IN THE SERVICE TERRITORY OF THAT AUTHORITY TO HELP DEFRAY THE COSTS THAT ARE DIRECTLY ASSOCIATED WITH IMPLEMENTING THE PROGRAM;

(VII) WITHIN THIRTY DAYS OF CLOSING OF A LOAN TO A CUSTOMER, PAY A SERVICING FEE OF ONE PERCENT OF THE LOAN AMOUNT TO THE COMBINATION ELEC-

TRIC AND GAS CORPORATION IN WHOSE SERVICE TERRITORY SUCH CUSTOMER IS LOCATED OR TO THE LONG ISLAND POWER AUTHORITY IF SUCH CUSTOMER IS LOCATED IN THE SERVICE TERRITORY OF THAT AUTHORITY TO HELP DEFRAY THE COSTS THAT ARE DIRECTLY ASSOCIATED WITH THE PROGRAM; AND

(VIII) exercise such other powers as are necessary for the proper administration of the program, INCLUDING AT THE DISCRETION OF THE AUTHORITY, ENTERING INTO AGREEMENTS WITH APPLICANTS AND WITH SUCH STATE OR FEDERAL AGENCIES AS NECESSARY TO DIRECTLY RECEIVE REBATES AND GRANTS AVAILABLE FOR ELIGIBLE PROJECTS AND APPLY SUCH FUNDS TO REPAYMENT OF APPLICANT LOAN OBLIGATIONS.

2. (a) The authority shall provide financial assistance in the form of loans for the performance of qualified energy efficiency services for eligible projects on terms and conditions established by the authority.

(b) Loans made by the authority pursuant to this section shall be subject to the following limitations:

(i) eligible projects shall meet cost effectiveness standards developed by the authority;

(ii) loans shall not exceed thirteen thousand dollars per applicant for approved qualified energy efficiency services for residential structures, and twenty-six thousand dollars per applicant for approved qualified energy efficiency services for non-residential structures, PROVIDED, HOWEVER, THAT THE AUTHORITY MAY PERMIT A LOAN IN EXCESS OF SUCH AMOUNTS IF THE TOTAL COST OF ENERGY EFFICIENCY MEASURES FINANCED BY SUCH LOAN WILL ACHIEVE A PAYBACK PERIOD OF FIFTEEN YEARS OR LESS, BUT IN NO EVENT SHALL ANY SUCH LOAN EXCEED TWENTY-FIVE THOUSAND DOLLARS PER APPLICANT FOR RESIDENTIAL STRUCTURES AND FIFTY THOUSAND DOLLARS PER APPLICANT FOR NON-RESIDENTIAL STRUCTURES; and for multi-family structures loans shall be in amounts determined by the authority, provided, however, that the authority shall assure that a significant number of residential structures are included in the program; [and]

(iii) NO FEES OR PENALTIES SHALL BE CHARGED OR COLLECTED FOR PREPAYMENT OF ANY SUCH LOAN; AND

(IV) loans shall be at interest rates determined by the authority to be no higher than necessary to make the provision of the qualified energy efficiency services feasible.

In determining whether to make a loan, and the amount of any loan that is made, the authority is authorized to consider whether the applicant or borrower has received, or is eligible to receive, financial assistance and other incentives from any other source for the qualified energy efficiency services which would be the subject of the loan. IN DETERMINING WHETHER A LOAN WILL ACHIEVE A PAYBACK PERIOD OF FIFTEEN YEARS OR LESS PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE AUTHORITY MAY CONSIDER THE AMOUNT OF THE LOAN TO BE REDUCED BY THE AMOUNT OF ANY REBATES FOR QUALIFIED ENERGY EFFICIENCY SERVICES RECEIVED BY THE APPLICANT OR BY THE AUTHORITY ON BEHALF OF AN APPLICANT.

(c) Applications for financial assistance pursuant to this section shall be reviewed and evaluated by the authority or its designee pursuant to eligibility and qualification requirements and criteria established by the authority. The authority shall establish standards for (i) qualified energy efficiency services, and (ii) measurement and verification of energy savings. Such standards shall meet or exceed the standards used by the authority for similar programs in existence on the effective date of this section.

(d) The amount of a fee paid for an energy audit provided under section eighteen hundred ninety-five of this title may be added to the amount of a loan that is made under this section to finance the cost of

1 an eligible project conducted in response to such energy audit. In such
2 a case, the amount of the fee may be reimbursed from the fund to the
3 borrower.

4 (E) IN ESTABLISHING AN ON-BILL RECOVERY MECHANISM:

5 (I) THE COST-EFFECTIVENESS OF AN ELIGIBLE PROJECT SHALL BE EVALUATED
6 SOLELY ON THE BASIS OF THE COSTS AND PROJECTED SAVINGS TO THE APPLYING
7 CUSTOMER, USING STANDARD ENGINEERING ASSESSMENTS AND PRIOR BILLING DATA
8 AND USAGE PATTERNS; PROVIDED HOWEVER THAT BASED UPON THE MOST RECENT
9 CUSTOMER DATA AVAILABLE, ON AN ANNUALIZED BASIS, THE MONTHLY ON-BILL
10 REPAYMENT AMOUNT FOR A PACKAGE OF MEASURES SHALL NOT EXCEED ONE-TWELFTH
11 OF THE SAVINGS PROJECTED TO RESULT FROM THE INSTALLATION OF THE MEASURES
12 PROVIDED FURTHER THAT NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT OR
13 PREVENT CUSTOMERS WHOSE PRIMARY HEATING ENERGY SOURCE IS FROM DELIVERA-
14 BLE FUELS FROM PARTICIPATING IN THE PROGRAM;

15 (II) THE AUTHORITY SHALL ESTABLISH A PROCESS FOR RECEIPT AND RESOL-
16 UTION OF CUSTOMER COMPLAINTS CONCERNING ON-BILL RECOVERY CHARGES AND FOR
17 ADDRESSING DELAYS AND DEFAULTS IN CUSTOMER PAYMENTS; AND

18 (III) THE AUTHORITY MAY LIMIT THE AVAILABILITY OF LIGHTING MEASURES OR
19 HOUSEHOLD APPLIANCES THAT ARE NOT PERMANENTLY AFFIXED TO REAL PROPERTY.

20 (F) PRIOR TO OR AT THE CLOSING OF EACH LOAN MADE PURSUANT TO THIS
21 SECTION, THE AUTHORITY SHALL CAUSE A NOTICE TO BE PROVIDED TO EACH
22 CUSTOMER RECEIVING SUCH LOAN STATING, IN CLEAR AND CONSPICUOUS TERMS:

23 (I) THE FINANCIAL AND LEGAL OBLIGATIONS AND RISKS OF ACCEPTING SUCH
24 LOAN RESPONSIBILITIES, INCLUDING THE OBLIGATION TO PROVIDE OR CONSENT TO
25 THE CUSTOMER'S UTILITY PROVIDING THE AUTHORITY INFORMATION ON THE SOURC-
26 ES AND QUANTITIES OF ENERGY USED IN THE CUSTOMER'S PREMISES AND ANY
27 IMPROVEMENTS OR MODIFICATIONS TO THE PREMISES, USE OF THE PREMISES OR
28 ENERGY CONSUMING APPLIANCES OR EQUIPMENT OF ANY TYPE THAT MAY SIGNIF-
29 ICANTLY AFFECT ENERGY USAGE;

30 (II) THAT THE ON-BILL RECOVERY CHARGE WILL BE BILLED BY SUCH CUSTOMER
31 UTILITY COMPANY AND THAT FAILURE TO PAY SUCH ON-BILL RECOVERY CHARGE MAY
32 RESULT IN THE CUSTOMER HAVING HIS OR HER ELECTRICITY AND/OR GAS TERMI-
33 NATED FOR NON-PAYMENT, PROVIDED THAT SUCH UTILITY COMPANY FOLLOWS THE
34 REQUIREMENTS OF ARTICLE TWO OF THE PUBLIC SERVICE LAW WITH RESPECT TO
35 RESIDENTIAL CUSTOMERS;

36 (III) THAT INCURRING SUCH LOAN TO UNDERTAKE ENERGY-EFFICIENCY
37 PROJECTS MAY NOT RESULT IN LOWER MONTHLY ENERGY COSTS OVER TIME, BASED
38 ON ADDITIONAL FACTORS THAT CONTRIBUTE TO MONTHLY ENERGY COSTS;

39 (IV) THAT THE PROGRAM IS OPERATED BY THE AUTHORITY AND IT IS THE SOLE
40 RESPONSIBILITY OF THE AUTHORITY TO HANDLE CONSUMER INQUIRIES AND
41 COMPLAINTS RELATED TO THE OPERATION AND LENDING ASSOCIATED WITH THE
42 PROGRAM, PROVIDED FURTHER THAT THE AUTHORITY SHALL PROVIDE A MECHANISM
43 TO RECEIVE SUCH CONSUMER INQUIRIES AND COMPLAINTS.

44 (G) ANY PERSON ENTERING INTO A LOAN AGREEMENT PURSUANT TO THIS SECTION
45 SHALL HAVE THE RIGHT TO CANCEL ANY SUCH LOAN AGREEMENT UNTIL MIDNIGHT OF
46 THE FIFTH BUSINESS DAY FOLLOWING THE DAY ON WHICH SUCH PERSON SIGNS SUCH
47 AGREEMENT PROVIDED THE LOAN PROCEEDS HAVE NOT YET BEEN DISBURSED.

48 3. THE AUTHORITY SHALL EVALUATE THE COST-EFFECTIVENESS OF THE ON-BILL
49 RECOVERY MECHANISM ON AN ON-GOING BASIS. (A) IN CONDUCTING SUCH EVALU-
50 ATION, THE AUTHORITY SHALL REQUEST EACH CUSTOMER TO PROVIDE:

51 (I) INFORMATION ON ENERGY USAGE AND/OR PERMISSION TO COLLECT INFORMA-
52 TION ON ENERGY USAGE FROM UTILITIES AND OTHER RETAIL VENDORS, INCLUDING
53 BUT NOT LIMITED TO INFORMATION REQUIRED TO BE FURNISHED TO CONSUMERS
54 UNDER ARTICLE SEVENTEEN OF THE ENERGY LAW;

55 (II) INFORMATION ON OTHER SOURCES OF ENERGY USED IN THE CUSTOMER'S
56 PREMISES; AND

(III) INFORMATION ON ANY IMPROVEMENTS OR MODIFICATIONS TO THE PREMISES THAT MAY SIGNIFICANTLY AFFECT ENERGY USAGE.

(B) AT A MINIMUM THE AUTHORITY SHALL COLLECT AND MAINTAIN INFORMATION FOR DATES PRIOR TO THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES, TO ESTABLISH A BASELINE, AND FOR DATES COVERING A SUBSEQUENT TIME PERIOD TO MEASURE THE EFFECTIVENESS OF SUCH MEASURES. SUCH DATA SHALL BE CORRELATED WITH INFORMATION FROM THE ENERGY AUDIT AND ANY OTHER RELEVANT INFORMATION, INCLUDING INFORMATION ON LOCAL WEATHER CONDITIONS, AND SHALL BE USED TO EVALUATE THE ON-BILL RECOVERY PROGRAM AND TO IMPROVE THE ACCURACY OF PROJECTIONS OF COST-EFFECTIVENESS ON AN ON-GOING BASIS. AN ANALYSIS OF SUCH DATA SHALL BE INCLUDED IN THE ANNUAL REPORT PREPARED PURSUANT TO SECTION EIGHTEEN HUNDRED NINETY-NINE OF THIS TITLE.

(C) ALL INFORMATION COLLECTED BY THE AUTHORITY SHALL BE CONFIDENTIAL AND SHALL BE USED EXCLUSIVELY FOR THE PURPOSES OF THIS SUBDIVISION.

4. (A) QUALIFIED ENERGY EFFICIENCY SERVICES REPAID THROUGH AN ON-BILL RECOVERY MECHANISM SHALL BE CONSIDERED A SPECIAL ENERGY PROJECT PURSUANT TO SECTION EIGHTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE. THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL SECURE EVERY LOAN ISSUED FOR SUCH SERVICES THAT ARE TO BE REPAID THROUGH AN ON-BILL RECOVERY MECHANISM WITH A MORTGAGE UPON THE REAL PROPERTY THAT IS IMPROVED BY SUCH SERVICES. SUCH MORTGAGE SHALL BE RECORDED PURSUANT TO SECTION TWO HUNDRED NINETY-ONE-D OF THE REAL PROPERTY LAW.

(B) ALL TERMS AND PROVISIONS OF A GREEN JOBS-GREEN NEW YORK MORTGAGE PURSUANT TO THIS SUBDIVISION SHALL BE SUBJECT AND SUBORDINATE TO THE LIEN OF ANY MORTGAGE OR MORTGAGES ON SUCH PROPERTY. WHEN A SUBSEQUENT PURCHASER OF THE PROPERTY IS GRANTED A MORTGAGE, THE GREEN JOBS-GREEN NEW YORK MORTGAGE SHALL BE SUBORDINATE TO THE TERMS OF THAT MORTGAGE.

(C) THE MORTGAGEE SHALL NOT RETAIN ANY RIGHT TO ENFORCE PAYMENT OR FORECLOSE UPON THE PROPERTY.

S 9. Section 1897 of the public authorities law is amended by adding a new subdivision 7 to read as follows:

7. THE AUTHORITY SHALL PRESCRIBE CONDITIONS FOR TRAINING THAT WILL INCLUDE IDENTIFIABLE STANDARDS FOR ALL EDUCATION AND TRAINING ACTIVITIES AUTHORIZED UNDER THIS SECTION, AND WILL DESIGNATE A CERTIFICATE TO BE ISSUED TO ANY TRAINEE THAT SUCCESSFULLY MEETS SUCH STANDARDS AND COMPLETES THE REQUIRED EDUCATION AND TRAINING.

S 10. Subdivision 3 of section 1899 of the public authorities law, as added by chapter 487 of the laws of 2009, is amended to read as follows:

3. The status of the authority's activities and outcomes related to section eighteen hundred ninety-six of this title. Such report shall include, but not be limited to:

(a) the number of persons who have applied for and received financial assistance through the revolving loan fund;

(b) the revolving loan fund account balances;

(c) the number of loans in default; [and]

(d) the amount and nature of the costs incurred by the authority for the activities described in paragraph (c) of subdivision one of section eighteen hundred ninety-six of this title;

(E) THE AUTHORITY'S ACTIVITIES AND OUTCOMES RELATED TO ESTABLISHING AN ON-BILL RECOVERY MECHANISM, INCLUDING THE NUMBER OF PERSONS WHO HAVE APPLIED FOR AND WHO HAVE RECEIVED FINANCIAL ASSISTANCE THAT UTILIZES ON-BILL RECOVERY AND THE RESULTS OF THE EVALUATION PROGRAM PERFORMED PURSUANT TO SUBDIVISION THREE OF SECTION EIGHTEEN HUNDRED NINETY-SIX OF THIS TITLE;

(F) THE AMOUNT EXPENDED BY THE AUTHORITY IN SUPPORT OF THE PROGRAM AND THE PURPOSES FOR WHICH SUCH FUNDS HAVE BEEN EXPENDED;

(G) THE NUMBER OF CUSTOMERS PARTICIPATING IN THE PROGRAM, SEPARATELY STATING THE NUMBER OF RESIDENTIAL AND NON-RESIDENTIAL CUSTOMERS AND THE AMOUNTS FINANCED;

(H) THE NUMBER OF PROGRAM PARTICIPANTS WHO ARE IN ARREARS IN THEIR UTILITY ACCOUNTS FOR ELECTRIC AND/OR GAS SERVICE;

(I) THE NUMBER OF PROGRAM PARTICIPANTS WHO ARE IN ARREARS IN THEIR ON-BILL RECOVERY CHARGE PAYMENTS;

(J) THE NUMBER OF PROGRAM PARTICIPANTS WHOSE UTILITY SERVICE HAS BEEN TERMINATED FOR NON-PAYMENT;

(K) A DESCRIPTION OF THE GEOGRAPHIC DISTRIBUTION OF LOANS MADE;

(L) AN ESTIMATE OF THE ENERGY SAVINGS RESULTING FROM THIS PROGRAM;

(M) AN ESTIMATE OF THE AVERAGE PROJECT COST; AND

(N) IN CONSULTATION WITH THE DEPARTMENT OF LABOR, AN ESTIMATE OF THE NUMBER OF JOBS CREATED UNDER THE PROGRAM.

S 11. Section 242 of the real property law is amended by adding a new subdivision 4 to read as follows:

4. DISCLOSURE PRIOR TO THE SALE OF REAL PROPERTY TO WHICH A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE APPLIES. (A) ANY PERSON, FIRM, COMPANY, PARTNERSHIP OR CORPORATION OFFERING TO SELL REAL PROPERTY WHICH IS SUBJECT TO A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW SHALL PROVIDE WRITTEN NOTICE TO THE PROSPECTIVE PURCHASER OR THE PROSPECTIVE PURCHASER'S AGENT, STATING AS FOLLOWS: "THIS PROPERTY IS SUBJECT TO A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE". SUCH NOTICE SHALL ALSO STATE THE TOTAL AMOUNT OF THE ORIGINAL CHARGE, THE PAYMENT SCHEDULE AND THE APPROXIMATE REMAINING BALANCE, A DESCRIPTION OF THE ENERGY EFFICIENCY SERVICES PERFORMED, INCLUDING IMPROVEMENTS TO THE PROPERTY, AND AN EXPLANATION OF THE BENEFIT OF THE GREEN JOBS-GREEN NEW YORK QUALIFIED ENERGY EFFICIENCY SERVICES. SUCH NOTICE SHALL BE PROVIDED BY THE SELLER PRIOR TO ACCEPTING A PURCHASE OFFER.

(B) ANY PROSPECTIVE OR ACTUAL PURCHASER WHO HAS SUFFERED A LOSS DUE TO A VIOLATION OF THIS SUBDIVISION IS ENTITLED TO RECOVER ANY ACTUAL DAMAGES INCURRED FROM THE PERSON OFFERING TO SELL OR SELLING SAID REAL PROPERTY.

S 12. The public service law is amended by adding a new article 10 to read as follows:

ARTICLE 10

SITING OF MAJOR ELECTRIC GENERATING FACILITIES

SECTION 160. DEFINITIONS.

161. GENERAL PROVISIONS RELATING TO THE BOARD.

162. BOARD CERTIFICATE.

163. PRE-APPLICATION PROCEDURES.

164. APPLICATION FOR A CERTIFICATE.

165. HEARING SCHEDULE.

166. PARTIES TO A CERTIFICATION PROCEEDING.

167. CONDUCT OF HEARING.

168. BOARD DECISIONS.

169. OPINION TO BE ISSUED WITH DECISION.

170. REHEARING AND JUDICIAL REVIEW.

171. JURISDICTION OF COURTS.

172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

173. APPLICABILITY TO PUBLIC AUTHORITIES.

S 160. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING TERMS, UNLESS THE CONTEXT OTHERWISE REQUIRES, SHALL HAVE THE FOLLOWING MEANINGS:

1 1. "MUNICIPALITY" MEANS A COUNTY, CITY, TOWN OR VILLAGE LOCATED IN
2 THIS STATE.

3 2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING
4 FACILITY WITH A NAMEPLATE GENERATING CAPACITY OF TWENTY-FIVE THOUSAND
5 KILOWATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES
6 AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER
7 ARTICLE SEVEN OF THIS CHAPTER.

8 3. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, PUBLIC BENEFIT CORPO-
9 RATION, POLITICAL SUBDIVISION, GOVERNMENTAL AGENCY, MUNICIPALITY, PART-
10 NERSHIP, CO-OPERATIVE ASSOCIATION, TRUST OR ESTATE.

11 4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION
12 SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST
13 OF SEVEN PERSONS: THE CHAIR OF THE DEPARTMENT, WHO SHALL SERVE AS CHAIR
14 OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; THE
15 COMMISSIONER OF HEALTH; THE CHAIR OF THE NEW YORK STATE ENERGY RESEARCH
16 AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND
17 TWO AD HOC PUBLIC MEMBERS, BOTH OF WHOM SHALL RESIDE WITHIN THE MUNICI-
18 PALITY IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED, EXCEPT IF SUCH
19 FACILITY IS PROPOSED TO BE LOCATED WITHIN THE CITY OF NEW YORK, THEN ALL
20 AD HOC MEMBERS SHALL RESIDE WITHIN THE COMMUNITY DISTRICT IN WHICH THE
21 FACILITY IS PROPOSED TO BE LOCATED. ONE AD HOC MEMBER SHALL BE APPOINTED
22 BY THE PRESIDENT PRO TEM OF THE SENATE AND ONE AD HOC MEMBER SHALL BE
23 APPOINTED BY THE SPEAKER OF THE ASSEMBLY, IN ACCORDANCE WITH SUBDIVISION
24 TWO OF SECTION ONE HUNDRED SIXTY-ONE OF THIS ARTICLE. THE TERM OF THE AD
25 HOC PUBLIC MEMBERS SHALL CONTINUE UNTIL A FINAL DETERMINATION IS MADE IN
26 THE PARTICULAR PROCEEDING FOR WHICH THEY WERE APPOINTED.

27 5. "CERTIFICATE" MEANS A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY
28 AND PUBLIC NEED AUTHORIZING THE CONSTRUCTION OF A MAJOR ELECTRIC GENER-
29 ATING FACILITY ISSUED BY THE BOARD PURSUANT TO THIS ARTICLE.

30 6. "FUEL WASTE BYPRODUCT" SHALL MEAN WASTE OR COMBINATION OF WASTES
31 PRODUCED AS A BYPRODUCT OF GENERATING ELECTRICITY FROM A MAJOR ELECTRIC
32 GENERATING FACILITY IN AN AMOUNT WHICH REQUIRES STORAGE OR DISPOSAL AND,
33 BECAUSE OF ITS QUANTITY, CONCENTRATION, OR PHYSICAL, CHEMICAL OR OTHER
34 CHARACTERISTICS, MAY POSE A SUBSTANTIAL PRESENT OR POTENTIAL HAZARD TO
35 HUMAN HEALTH OR THE ENVIRONMENT.

36 7. "NAMEPLATE" MEANS A MANUFACTURER'S DESIGNATION, GENERALLY AS
37 AFFIXED TO THE GENERATOR UNIT, WHICH STATES THE TOTAL OUTPUT OF SUCH
38 GENERATING FACILITY AS ORIGINALLY DESIGNED ACCORDING TO THE MANUFACTUR-
39 ER'S ORIGINAL DESIGN SPECIFICATIONS.

40 8. "PUBLIC INFORMATION COORDINATOR" MEANS AN OFFICE CREATED WITHIN THE
41 DEPARTMENT WHICH SHALL ASSIST AND ADVISE INTERESTED PARTIES AND MEMBERS
42 OF THE PUBLIC IN PARTICIPATING IN THE SITING AND CERTIFICATION OF MAJOR
43 ELECTRIC GENERATING FACILITIES. THE DUTIES OF THE PUBLIC INFORMATION
44 OFFICER SHALL INCLUDE, BUT NOT BE LIMITED TO: (A) IMPLEMENTING MEASURES
45 THAT ASSURE FULL AND ADEQUATE PUBLIC PARTICIPATION IN MATTERS BEFORE THE
46 BOARD; (B) RESPONDING TO INQUIRIES FROM THE PUBLIC FOR INFORMATION ON
47 HOW TO PARTICIPATE IN MATTERS BEFORE THE BOARD; (C) ASSISTING THE PUBLIC
48 IN REQUESTING RECORDS RELATING TO MATTERS BEFORE THE BOARD; (D) ENSURING
49 ALL INTERESTED PERSONS ARE PROVIDED WITH A REASONABLE OPPORTUNITY TO
50 PARTICIPATE AT PUBLIC MEETINGS RELATING TO MATTERS BEFORE THE BOARD; (E)
51 ENSURING THAT ALL NECESSARY OR REQUIRED DOCUMENTS ARE AVAILABLE FOR
52 PUBLIC ACCESS ON THE DEPARTMENT'S WEBSITE WITHIN ANY TIME PERIODS SPECI-
53 FIED WITHIN THIS ARTICLE; AND (F) ANY OTHER DUTIES AS MAY BE PRESCRIBED
54 BY THE BOARD, AFTER CONSULTATION WITH THE DEPARTMENT.

55 9. "LOCAL PARTIES" SHALL MEAN PERSONS RESIDING IN A COMMUNITY WHO MAY
56 BE AFFECTED BY THE PROPOSED MAJOR ELECTRIC GENERATING FACILITY WHO INDI-

VIDUALLY OR COLLECTIVELY SEEK INTERVENOR FUNDING PURSUANT TO SECTIONS ONE HUNDRED SIXTY-THREE AND ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE.

S 161. GENERAL PROVISIONS RELATING TO THE BOARD. 1. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE THE POWER TO ADOPT THE RULES AND REGULATIONS RELATING TO THE PROCEDURES TO BE USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE, INCLUDING THE SUSPENSION OR REVOCATION THEREOF, AND SHALL FURTHER HAVE THE POWER TO SEEK DELEGATION FROM THE FEDERAL GOVERNMENT PURSUANT TO FEDERAL REGULATORY PROGRAMS APPLICABLE TO THE SITING OF MAJOR ELECTRIC FACILITIES. THE CHAIRPERSON, AFTER CONSULTATION WITH THE OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLICABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND REGULATIONS ADOPTED HEREUNDER AND TO GRANT REQUESTS FOR EXTENSIONS OR AMENDMENTS TO OR TRANSFERS OF CERTIFICATE TERMS AND CONDITIONS, PROVIDED THAT NO PARTY TO THE PROCEEDING OPPOSES SUCH REQUEST FOR EXTENSIONS OR AMENDMENTS WITHIN THIRTY DAYS OF THE FILING OF SUCH REQUEST. REGULATIONS ADOPTED BY THE BOARD MAY PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY. THE BOARD SHALL NOT ACCEPT ANY PRE-APPLICATION PRELIMINARY SCOPING STATEMENT OR APPLICATION FOR A CERTIFICATE, OR EXERCISE ANY POWERS OR FUNCTIONS UNTIL THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS PROMULGATED RULES AND REGULATIONS REQUIRED BY PARAGRAPHS (F) AND (G) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE AND SECTION 19-0312 OF THE ENVIRONMENTAL CONSERVATION LAW; PROVIDED HOWEVER THAT THE BOARD SHALL BE AUTHORIZED TO ADOPT RULES AND REGULATIONS REQUIRED BY THIS ARTICLE.

2. UPON RECEIPT OF A PRE-APPLICATION PRELIMINARY SCOPING STATEMENT UNDER THIS ARTICLE, THE CHAIR SHALL PROMPTLY NOTIFY THE GOVERNOR, THE PRESIDENT PRO TEM OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE CHIEF EXECUTIVE OFFICERS REPRESENTING THE MUNICIPALITY AND THE COUNTY IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED, AND, IF SUCH FACILITY IS PROPOSED TO BE LOCATED WITHIN THE CITY OF NEW YORK, THE MAYOR OF THE CITY OF NEW YORK, AS WELL AS THE CHAIRPERSON OF THE COMMUNITY BOARD AND THE BOROUGH PRESIDENT REPRESENTING THE AREA IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED. ONE AD HOC MEMBER SHALL BE APPOINTED BY THE PRESIDENT PRO TEM OF THE SENATE AND ONE AD HOC MEMBER SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY FROM A LIST OF CANDIDATES SUBMITTED TO THEM, IN THE FOLLOWING MANNER. IF SUCH FACILITY IS PROPOSED TO BE LOCATED OUTSIDE OF THE CITY OF NEW YORK, THE CHIEF EXECUTIVE OFFICER REPRESENTING THE MUNICIPALITY SHALL NOMINATE FOUR CANDIDATES AND THE CHIEF EXECUTIVE OFFICER REPRESENTING THE COUNTY SHALL NOMINATE FOUR CANDIDATES FOR CONSIDERATION. IF SUCH FACILITY IS PROPOSED TO BE LOCATED OUTSIDE OF THE CITY OF NEW YORK AND IN A VILLAGE LOCATED WITHIN A TOWN, THE CHIEF EXECUTIVE OFFICER REPRESENTING THE TOWN SHALL NOMINATE FOUR CANDIDATES, THE CHIEF EXECUTIVE OFFICER REPRESENTING THE COUNTY SHALL NOMINATE FOUR CANDIDATES, AND THE CHIEF EXECUTIVE OFFICER REPRESENTING THE VILLAGE SHALL NOMINATE FOUR CANDIDATES FOR CONSIDERATION. IF SUCH FACILITY IS PROPOSED TO BE LOCATED IN THE CITY OF NEW YORK, THE CHAIRPERSON OF THE COMMUNITY BOARD, THE BOROUGH PRESIDENT, AND THE MAYOR OF THE CITY OF NEW YORK SHALL EACH NOMINATE FOUR CANDIDATES FOR CONSIDERATION. NOMINATIONS SHALL BE SUBMITTED TO THE PRESIDENT PRO TEM OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY WITHIN FIFTEEN DAYS OF RECEIPT OF NOTIFICATION OF THE PRE-APPLICATION PRELIMINARY SCOPING STATEMENT. IN THE EVENT THAT THE PRESIDENT PRO TEM OF THE SENATE DOES NOT APPOINT ONE

1 OF THE CANDIDATES WITHIN THIRTY DAYS OF SUCH NOMINATIONS, THE GOVERNOR
2 SHALL APPOINT THE AD HOC MEMBER FROM THE LIST OF CANDIDATES. IN THE
3 EVENT THAT THE SPEAKER OF THE ASSEMBLY DOES NOT APPOINT ONE OF THE
4 CANDIDATES WITHIN THIRTY DAYS OF SUCH NOMINATIONS, THE GOVERNOR SHALL
5 APPOINT THE AD HOC MEMBER FROM THE LIST OF CANDIDATES. IN THE EVENT
6 THAT ONE OR BOTH OF THE AD HOC PUBLIC MEMBERS HAVE NOT BEEN APPOINTED
7 WITHIN FORTY-FIVE DAYS, A MAJORITY OF PERSONS NAMED TO THE BOARD SHALL
8 CONSTITUTE A QUORUM.

9 3. IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW, NO
10 PERSON SHALL BE ELIGIBLE TO BE AN APPOINTEE TO THE BOARD WHO HOLDS
11 ANOTHER STATE OR LOCAL OFFICE. NO MEMBER OF THE BOARD MAY RETAIN OR HOLD
12 ANY OFFICIAL RELATION TO, OR ANY SECURITIES OF AN ELECTRIC UTILITY
13 CORPORATION OPERATING IN THE STATE OR PROPOSED FOR OPERATION IN THE
14 STATE, ANY AFFILIATE THEREOF OR ANY OTHER COMPANY, FIRM, PARTNERSHIP,
15 CORPORATION, ASSOCIATION OR JOINT-STOCK ASSOCIATION THAT MAY APPEAR
16 BEFORE THE BOARD, NOR SHALL EITHER OF THE APPOINTEES HAVE BEEN A DIREC-
17 TOR, OFFICER OR, WITHIN THE PREVIOUS TEN YEARS, AN EMPLOYEE THEREOF. THE
18 AD HOC APPOINTEES SHALL RECEIVE THE SUM OF TWO HUNDRED DOLLARS FOR EACH
19 DAY IN WHICH THEY ARE ACTUALLY ENGAGED IN THE PERFORMANCE OF THEIR
20 DUTIES PURSUANT TO THIS ARTICLE PLUS ACTUAL AND NECESSARY EXPENSES
21 INCURRED BY THEM IN THE PERFORMANCE OF SUCH DUTIES. THE CHAIRPERSON
22 SHALL PROVIDE SUCH PERSONNEL, HEARING EXAMINERS, SUBORDINATES AND
23 EMPLOYEES AND SUCH LEGAL, TECHNOLOGICAL, SCIENTIFIC, ENGINEERING AND
24 OTHER SERVICES AND SUCH MEETING ROOMS, HEARING ROOMS AND OTHER FACILI-
25 TIES AS MAY BE REQUIRED IN PROCEEDINGS UNDER THIS ARTICLE. THE BOARD
26 UNDER THE DIRECTION OF THE CHAIRPERSON, MAY PROVIDE FOR ITS OWN REPRE-
27 SENTATION AND APPEARANCE IN ALL ACTIONS AND PROCEEDINGS INVOLVING ANY
28 QUESTION UNDER THIS ARTICLE. THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-
29 TION SHALL PROVIDE ASSOCIATE HEARING EXAMINERS. EACH MEMBER OF THE BOARD
30 OTHER THAN THE AD HOC APPOINTEES MAY DESIGNATE AN ALTERNATE TO SERVE
31 INSTEAD OF THE MEMBER WITH RESPECT TO ALL PROCEEDINGS PURSUANT TO THIS
32 ARTICLE. SUCH DESIGNATION SHALL BE IN WRITING AND FILED WITH THE CHAIR-
33 PERSON.

34 S 162. BOARD CERTIFICATE. 1. FOLLOWING THE PROMULGATION OF RULES AND
35 REGULATIONS PURSUANT TO PARAGRAPHS (F) AND (G) OF SUBDIVISION ONE OF
36 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, AND SECTION 19-0312 OF
37 THE ENVIRONMENTAL CONSERVATION LAW, NO PERSON SHALL COMMENCE THE PREPA-
38 RATION OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF A MAJOR ELECTRIC
39 GENERATING FACILITY IN THE STATE, OR INCREASE THE CAPACITY OF AN EXIST-
40 ING ELECTRIC GENERATING FACILITY BY MORE THAN TWENTY-FIVE THOUSAND KILO-
41 WATTS WITHOUT HAVING FIRST OBTAINED A CERTIFICATE ISSUED WITH RESPECT TO
42 SUCH FACILITY BY THE BOARD. ANY SUCH FACILITY WITH RESPECT TO WHICH A
43 CERTIFICATE IS ISSUED SHALL NOT THEREAFTER BE BUILT, MAINTAINED OR OPER-
44 ATED EXCEPT IN CONFORMITY WITH SUCH CERTIFICATE AND ANY TERMS, LIMITA-
45 TIONS OR CONDITIONS CONTAINED THEREIN, PROVIDED THAT NOTHING HEREIN
46 SHALL EXEMPT SUCH FACILITY FROM COMPLIANCE WITH FEDERAL, STATE AND LOCAL
47 LAWS AND REGULATIONS EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE. A
48 CERTIFICATE FOR A MAJOR ELECTRIC GENERATING FACILITY, OR AN INCREASE IN
49 THE CAPACITY OF AN EXISTING ELECTRIC GENERATING FACILITY BY MORE THAN
50 TWENTY-FIVE THOUSAND KILOWATTS, MAY BE ISSUED ONLY PURSUANT TO THIS
51 ARTICLE.

52 2. A CERTIFICATE MAY BE TRANSFERRED, SUBJECT TO THE APPROVAL OF THE
53 BOARD, TO A PERSON WHO AGREES TO COMPLY WITH THE TERMS, LIMITATIONS AND
54 CONDITIONS CONTAINED THEREIN.

55 3. A CERTIFICATE ISSUED UNDER THIS ARTICLE MAY BE AMENDED PURSUANT TO
56 THIS SECTION.

1 4. THIS ARTICLE SHALL NOT APPLY: (A) TO A MAJOR ELECTRIC GENERATING
2 FACILITY OVER WHICH ANY AGENCY OR DEPARTMENT OF THE FEDERAL GOVERNMENT
3 HAS EXCLUSIVE SITING JURISDICTION, OR HAS JURISDICTION CONCURRENT WITH
4 THAT OF THE STATE AND HAS EXERCISED SUCH JURISDICTION TO THE EXCLUSION
5 OF REGULATION OF THE FACILITY BY THE STATE;

6 (B) TO NORMAL REPAIRS, REPLACEMENTS, MODIFICATIONS AND IMPROVEMENTS OF
7 A MAJOR ELECTRIC GENERATING FACILITY, WHENEVER BUILT, WHICH DO NOT
8 CONSTITUTE A VIOLATION OF ANY CERTIFICATE ISSUED UNDER THIS ARTICLE AND
9 WHICH DO NOT RESULT IN AN INCREASE IN CAPACITY OF THE FACILITY OF MORE
10 THAN TWENTY-FIVE THOUSAND KILOWATTS;

11 (C) TO A MAJOR ELECTRIC GENERATING FACILITY (I) CONSTRUCTED ON LANDS
12 DEDICATED TO INDUSTRIAL USES, (II) THE OUTPUT OF WHICH SHALL BE USED
13 SOLELY FOR INDUSTRIAL PURPOSES, ON THE PREMISES, AND (III) THE GENERAT-
14 ING CAPACITY OF WHICH DOES NOT EXCEED TWO HUNDRED THOUSAND KILOWATTS; OR

15 (D) TO A MAJOR ELECTRIC GENERATING FACILITY IF, ON OR BEFORE THE
16 EFFECTIVE DATE OF THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS
17 ARTICLE AND SECTION 19-0312 OF THE ENVIRONMENTAL CONSERVATION LAW, AN
18 APPLICATION HAS BEEN MADE FOR A LICENSE, PERMIT, CERTIFICATE, CONSENT OR
19 APPROVAL FROM ANY FEDERAL, STATE OR LOCAL COMMISSION, AGENCY, BOARD OR
20 REGULATORY BODY, IN WHICH APPLICATION THE LOCATION OF THE MAJOR ELECTRIC
21 GENERATING FACILITY HAS BEEN DESIGNATED BY THE APPLICANT; OR IF THE
22 FACILITY IS UNDER CONSTRUCTION AT SUCH TIME.

23 5. ANY PERSON INTENDING TO CONSTRUCT A MAJOR ELECTRIC GENERATING
24 FACILITY EXCLUDED FROM THIS ARTICLE PURSUANT TO PARAGRAPH (B), (C), OR
25 (D) OF SUBDIVISION FOUR OF THIS SECTION MAY ELECT TO BECOME SUBJECT TO
26 THE PROVISIONS OF THIS ARTICLE BY DELIVERING NOTICE OF SUCH ELECTION TO
27 THE CHAIR OF THE BOARD. THIS ARTICLE SHALL THEREAFTER APPLY TO EACH
28 ELECTRIC GENERATING FACILITY IDENTIFIED IN SUCH NOTICE FROM THE DATE OF
29 ITS RECEIPT BY THE CHAIR OF THE BOARD. FOR THE PURPOSES OF THIS ARTICLE,
30 EACH SUCH FACILITY SHALL BE TREATED IN THE SAME MANNER AS A MAJOR ELEC-
31 TRIC GENERATING FACILITY AS DEFINED IN THIS ARTICLE.

32 S 163. PRE-APPLICATION PROCEDURES. 1. ANY PERSON PROPOSING TO SUBMIT
33 AN APPLICATION FOR A CERTIFICATE SHALL FILE WITH THE BOARD A PRELIMINARY
34 SCOPING STATEMENT CONTAINING A BRIEF DISCUSSION, ON THE BASIS OF AVAIL-
35 ABLE INFORMATION, OF THE FOLLOWING ITEMS:

36 (A) DESCRIPTION OF THE PROPOSED FACILITY AND ITS ENVIRONMENTAL
37 SETTING;

38 (B) POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS RESULTING FROM THE
39 CONSTRUCTION AND OPERATION OF THE PROPOSED FACILITY;

40 (C) PROPOSED STUDIES OR PROGRAM OF STUDIES DESIGNED TO EVALUATE POTEN-
41 TIAL ENVIRONMENTAL AND HEALTH IMPACTS, INCLUDING, FOR PROPOSED WIND-POW-
42 ERED FACILITIES, PROPOSED STUDIES DURING PRE-CONSTRUCTION ACTIVITIES AND
43 A PROPOSED PERIOD OF POST-CONSTRUCTION OPERATIONS MONITORING FOR POTEN-
44 TIAL IMPACTS TO AVIAN AND BAT SPECIES;

45 (D) MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS; AND

46 (E) WHERE THE PROPOSED FACILITY INTENDS TO USE PETROLEUM OR OTHER
47 BACK-UP FUEL FOR GENERATING ELECTRICITY, A DISCUSSION AND/OR STUDY OF
48 THE SUFFICIENCY OF THE PROPOSED ON-SITE FUEL STORAGE CAPACITY AND
49 SUPPLY; AND

50 (F) REASONABLE ALTERNATIVES TO THE FACILITY THAT MAY BE REQUIRED BY
51 PARAGRAPH (I) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF
52 THIS ARTICLE;

53 (G) IDENTIFICATION OF ALL OTHER STATE AND FEDERAL PERMITS, CERTIF-
54 ICATIONS, OR OTHER AUTHORIZATIONS NEEDED FOR CONSTRUCTION, OPERATION OR
55 MAINTENANCE OF THE PROPOSED FACILITY; AND

1 (H) ANY OTHER INFORMATION THAT MAY BE RELEVANT OR THAT THE BOARD MAY
2 REQUIRE.

3 2. SUCH PERSON SHALL SERVE COPIES OF THE PRELIMINARY SCOPING STATEMENT
4 ON PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE
5 HUNDRED SIXTY-FOUR OF THIS ARTICLE AND PROVIDE NOTICE OF SUCH STATEMENT
6 AS PROVIDED IN PARAGRAPH (B) OF SUCH SUBDIVISION IN PLAIN LANGUAGE, IN
7 ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETERMINED BY THE BOARD BY A
8 SIGNIFICANT PORTION OF THE POPULATION IN THE COMMUNITY, THAT DESCRIBES
9 THE PROPOSED FACILITY AND ITS LOCATION, THE RANGE OF POTENTIAL ENVIRON-
10 MENTAL AND HEALTH IMPACTS OF EACH POLLUTANT, THE APPLICATION AND REVIEW
11 PROCESS, AND A CONTACT PERSON, WITH PHONE NUMBER AND ADDRESS, FROM WHOM
12 INFORMATION WILL BE AVAILABLE AS THE APPLICATION PROCEEDS.

13 3. TO FACILITATE THE PRE-APPLICATION AND APPLICATION PROCESSES AND
14 ENABLE CITIZENS TO PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND
15 SAFETY AND THE ENVIRONMENT, THE DEPARTMENT AND SUCH PERSON SHALL PROVIDE
16 OPPORTUNITIES FOR CITIZEN INVOLVEMENT. SUCH OPPORTUNITIES SHALL ENCOUR-
17 AGE CONSULTATION WITH THE PUBLIC EARLY IN THE PRE-APPLICATION AND APPLI-
18 CATION PROCESSES, ESPECIALLY BEFORE ANY PARTIES ENTER A STIPULATION
19 PURSUANT TO SUBDIVISION FIVE OF THIS SECTION. THE PRIMARY GOALS OF THE
20 CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILITATE COMMUNICATION
21 BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED PERSONS. THE PROCESS
22 SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTERESTED OR AFFECTED
23 PERSONS.

24 4. (A) EACH PRE-APPLICATION PRELIMINARY SCOPING STATEMENT SHALL BE
25 ACCOMPANIED BY A FEE IN AN AMOUNT EQUAL TO THREE HUNDRED FIFTY DOLLARS
26 FOR EACH THOUSAND KILOWATTS OF GENERATING CAPACITY OF THE SUBJECT FACIL-
27 ITY, BUT NO MORE THAN TWO HUNDRED THOUSAND DOLLARS, TO BE DEPOSITED IN
28 THE INTERVENOR ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-KKKK
29 OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE HEARING EXAMINER'S
30 DIRECTION TO DEFRAY PRE-APPLICATION EXPENSES INCURRED BY MUNICIPAL AND
31 LOCAL PARTIES (EXCEPT FOR A MUNICIPALITY SUBMITTING THE PRE-APPLICATION
32 SCOPING STATEMENT) FOR EXPERT WITNESS, CONSULTANT, ADMINISTRATIVE AND
33 LEGAL FEES. IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE PRE-APPLICA-
34 TION THE PRE-APPLICATION IS SUBSTANTIALLY MODIFIED OR REVISED, THE BOARD
35 MAY REQUIRE AN ADDITIONAL PRE-APPLICATION INTERVENOR FEE IN AN AMOUNT
36 NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS. NO FEES MADE AVAILABLE
37 UNDER THIS PARAGRAPH SHALL BE USED FOR JUDICIAL REVIEW OR LITIGATION.
38 ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT UPON THE SUBMISSION OF AN
39 APPLICATION FOR A CERTIFICATE SHALL BE MADE AVAILABLE TO INTERVENORS
40 ACCORDING TO PARAGRAPH (A) OF SUBDIVISION SIX OF SECTION ONE HUNDRED
41 SIXTY-FOUR OF THIS ARTICLE.

42 (B) PRE-APPLICATION DISBURSEMENTS FROM THE INTERVENOR ACCOUNT SHALL BE
43 MADE IN ACCORDANCE WITH RULES AND REGULATIONS ESTABLISHED PURSUANT TO
44 PARAGRAPH (B) OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF
45 THIS ARTICLE WHICH RULES SHALL PROVIDE FOR AN EXPEDITED PRE-APPLICATION
46 DISBURSEMENT SCHEDULE TO ASSURE EARLY AND MEANINGFUL PUBLIC INVOLVEMENT,
47 WITH AT LEAST ONE-HALF OF PRE-APPLICATION INTERVENOR FUNDS BECOMING
48 AVAILABLE THROUGH AN APPLICATION PROCESS TO COMMENCE WITHIN SIXTY DAYS
49 OF THE FILING OF A PRE-APPLICATION PRELIMINARY SCOPING STATEMENT.

50 5. AFTER MEETING THE REQUIREMENTS OF SUBDIVISIONS ONE THROUGH THREE OF
51 THIS SECTION, AND AFTER PRE-APPLICATION INTERVENOR FUNDS HAVE BEEN ALLO-
52 CATED BY THE PRE-HEARING EXAMINER PURSUANT TO PARAGRAPH (B) OF SUBDIVI-
53 SION FOUR OF THIS SECTION, SUCH PERSON MAY CONSULT AND SEEK AGREEMENT
54 WITH ANY INTERESTED PERSON, INCLUDING, BUT NOT LIMITED TO, THE STAFF OF
55 THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE
56 DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE PRELIMI-

1 NARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE OR TO BE
2 MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT, THE
3 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, THE
4 PERSON PROPOSING TO FILE AN APPLICATION, AND ANY OTHER INTERESTED PERSON
5 MAY ENTER INTO A STIPULATION SETTING FORTH AN AGREEMENT ON ANY ASPECT OF
6 THE PRELIMINARY SCOPING STATEMENT AND THE STUDIES OR PROGRAM OF STUDIES
7 TO BE CONDUCTED. ANY SUCH PERSON PROPOSING TO SUBMIT AN APPLICATION FOR
8 A CERTIFICATE SHALL SERVE A COPY OF THE PROPOSED STIPULATION UPON ALL
9 PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE
10 HUNDRED SIXTY-FOUR OF THIS ARTICLE, PROVIDE NOTICE OF SUCH STIPULATION
11 TO THOSE PERSONS IDENTIFIED IN PARAGRAPH (B) OF SUCH SUBDIVISION, AND
12 AFFORD THE PUBLIC A REASONABLE OPPORTUNITY TO SUBMIT COMMENTS ON THE
13 STIPULATION BEFORE IT IS EXECUTED BY THE INTERESTED PARTIES. NOTHING IN
14 THIS SECTION, HOWEVER, SHALL BAR ANY PARTY TO A HEARING ON AN APPLICA-
15 TION, OTHER THAN ANY PARTY TO A PRE-APPLICATION STIPULATION, FROM TIMELY
16 RAISING OBJECTIONS TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT
17 AND THE METHODOLOGY AND SCOPE OF ANY STIPULATED STUDIES OR PROGRAM OF
18 STUDIES IN ANY SUCH AGREEMENT. IN ORDER TO ATTEMPT TO RESOLVE ANY QUES-
19 TIONS THAT MAY ARISE AS A RESULT OF SUCH CONSULTATION, THE DEPARTMENT
20 SHALL DESIGNATE A HEARING EXAMINER WHO SHALL OVERSEE THE PRE-APPLICATION
21 PROCESS AND MEDIATE ANY ISSUE RELATING TO ANY ASPECT OF THE PRELIMINARY
22 SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR
23 PROGRAMS OF STUDY. UPON COMPLETION OF THE NOTICE PROVISIONS PROVIDED IN
24 THIS SECTION, SUCH HEARING EXAMINER SHALL, WITHIN SIXTY DAYS OF THE
25 FILING OF A PRELIMINARY SCOPING STATEMENT, CONVENE A MEETING OF INTER-
26 ESTED PARTIES IN ORDER TO INITIATE THE STIPULATION PROCESS.

27 S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIF-
28 ICATE SHALL FILE WITH THE BOARD AN APPLICATION, IN SUCH FORM AS THE
29 BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND MATERIALS:

30 (A) A DESCRIPTION OF THE SITE AND A DESCRIPTION OF THE FACILITY TO BE
31 BUILT THEREON; INCLUDING AVAILABLE SITE INFORMATION, MAPS AND
32 DESCRIPTIONS, PRESENT AND PROPOSED DEVELOPMENT, SOURCE AND VOLUME OF
33 WATER REQUIRED FOR PLANT OPERATION AND COOLING, ANTICIPATED EMISSIONS TO
34 AIR, INCLUDING BUT NOT LIMITED TO FEDERAL CRITERIA POLLUTANTS AND MERCU-
35 RY, ANTICIPATED DISCHARGES TO WATER AND GROUNDWATER, POLLUTION CONTROL
36 EQUIPMENT, AND, AS APPROPRIATE, GEOLOGICAL, VISUAL OR OTHER AESTHETIC,
37 ECOLOGICAL, TSUNAMI, SEISMIC, BIOLOGICAL, WATER SUPPLY, POPULATION AND
38 LOAD CENTER DATA;

39 (B) AN EVALUATION OF THE EXPECTED ENVIRONMENTAL AND HEALTH IMPACTS AND
40 SAFETY IMPLICATIONS OF THE FACILITY, BOTH DURING ITS CONSTRUCTION AND
41 ITS OPERATION, INCLUDING ANY STUDIES, IDENTIFYING THE AUTHOR AND DATE
42 THEREOF, USED IN THE EVALUATION, WHICH IDENTIFIES (I) THE ANTICIPATED
43 GASEOUS, LIQUID AND SOLID WASTES TO BE PRODUCED AT THE FACILITY INCLUD-
44 ING THEIR SOURCE, ANTICIPATED VOLUMES, COMPOSITION AND TEMPERATURE, AND
45 SUCH OTHER ATTRIBUTES AS THE BOARD MAY SPECIFY AND THE PROBABLE LEVEL OF
46 NOISE DURING CONSTRUCTION AND OPERATION OF THE FACILITY; (II) THE TREAT-
47 MENT PROCESSES TO REDUCE WASTES TO BE RELEASED TO THE ENVIRONMENT, THE
48 MANNER OF DISPOSAL FOR WASTES RETAINED AND MEASURES FOR NOISE ABATEMENT;
49 (III) THE ANTICIPATED VOLUMES OF WASTES TO BE RELEASED TO THE ENVIRON-
50 MENT UNDER ANY OPERATING CONDITION OF THE FACILITY, INCLUDING SUCH
51 METEOROLOGICAL, HYDROLOGICAL AND OTHER INFORMATION NEEDED TO SUPPORT
52 SUCH ESTIMATES; (IV) CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS
53 INDICATING COMPATIBILITY OF THE FACILITY WITH THE ENVIRONMENT; (V) HOW
54 THE CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING TRANSPORTATION
55 AND DISPOSAL OF WASTES WOULD COMPLY WITH ENVIRONMENTAL HEALTH AND SAFETY
56 STANDARDS, REQUIREMENTS, REGULATIONS AND RULES UNDER STATE AND MUNICIPAL

1 LAWS, AND A STATEMENT WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED;
2 (VI) WATER WITHDRAWALS FROM AND DISCHARGES TO THE WATERSHED; (VII) A
3 DESCRIPTION OF THE FUEL INTERCONNECTION AND SUPPLY FOR THE PROJECT; AND
4 (VIII) AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A
5 DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY;

6 (C) SUCH EVIDENCE AS WILL ENABLE THE BOARD AND THE COMMISSIONER OF
7 ENVIRONMENTAL CONSERVATION TO EVALUATE THE FACILITY'S POLLUTION CONTROL
8 SYSTEMS AND TO REACH A DETERMINATION TO ISSUE THEREFOR, SUBJECT TO
9 APPROPRIATE CONDITIONS AND LIMITATIONS, PERMITS PURSUANT TO FEDERAL
10 RECOGNITION OF STATE AUTHORITY IN ACCORDANCE WITH THE FEDERAL CLEAN
11 WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVA-
12 TION AND RECOVERY ACT, AND PERMITS PURSUANT TO SECTION 15-1503 AND ARTI-
13 CLE NINETEEN OF THE ENVIRONMENTAL CONSERVATION LAW;

14 (D) WHERE THE PROPOSED FACILITY INTENDS TO USE PETROLEUM OR OTHER
15 BACK-UP FUEL FOR GENERATING ELECTRICITY, EVIDENCE AND AN EVALUATION ON
16 THE ADEQUACY OF THE FACILITY'S ON-SITE BACK-UP FUEL STORAGE AND SUPPLY;

17 (E) A PLAN FOR SECURITY OF THE PROPOSED FACILITY DURING CONSTRUCTION
18 AND OPERATION OF SUCH FACILITY AND THE MEASURES TO BE TAKEN TO ENSURE
19 THE SAFETY AND SECURITY OF THE LOCAL COMMUNITY, INCLUDING CONTINGENCY,
20 EMERGENCY RESPONSE AND EVACUATION CONTROL, TO BE REVIEWED BY THE BOARD
21 IN CONSULTATION WITH THE NEW YORK STATE DIVISION OF HOMELAND SECURITY
22 AND EMERGENCY SERVICES AND IN CITIES WITH A POPULATION OVER ONE MILLION,
23 SUCH PLAN SHALL ALSO BE REVIEWED BY THE LOCAL OFFICE OF EMERGENCY
24 MANAGEMENT;

25 (F) IN ACCORDANCE WITH RULES AND REGULATIONS THAT SHALL BE PROMULGATED
26 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE ANALYSIS OF
27 ENVIRONMENTAL JUSTICE ISSUES, INCLUDING THE REQUIREMENTS OF PARAGRAPHS

28 (G) AND (H) OF SUBDIVISION ONE OF THIS SECTION, AN EVALUATION OF SIGNIF-
29 ICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACTS OF THE PROPOSED
30 FACILITY, IF ANY, RESULTING FROM ITS CONSTRUCTION AND OPERATION, INCLUD-
31 ING ANY STUDIES IDENTIFYING THE AUTHOR AND DATES THEREOF, WHICH WERE
32 USED IN THE EVALUATION;

33 (G) A CUMULATIVE IMPACT ANALYSIS OF AIR QUALITY WITHIN A HALF-MILE OF
34 THE FACILITY, OR OTHER RADIUS AS DETERMINED BY STANDARDS ESTABLISHED BY
35 DEPARTMENT OF ENVIRONMENTAL CONSERVATION REGULATIONS, THAT CONSIDERS
36 AVAILABLE DATA ASSOCIATED WITH PROJECTED EMISSIONS OF AIR POLLUTANTS,
37 INCLUDING BUT NOT LIMITED TO FEDERAL CRITERIA POLLUTANTS AND MERCURY,
38 FROM SOURCES, INCLUDING, BUT NOT LIMITED TO, THE FACILITY, FACILITIES
39 THAT HAVE BEEN PROPOSED UNDER THIS ARTICLE AND HAVE SUBMITTED AN APPLI-
40 CATION DETERMINED TO BE IN COMPLIANCE BY THE BOARD, EXISTING SOURCES,
41 AND SOURCES PERMITTED BUT NOT YET CONSTRUCTED THAT WERE PERMITTED SIXTY
42 OR MORE DAYS PRIOR TO THE FILING OF THE APPLICATION UNDER TITLE V OF THE
43 CLEAN AIR ACT, PROVIDED THAT SUCH ANALYSIS AND STANDARDS SHALL BE IN
44 ACCORDANCE WITH RULES AND REGULATIONS THAT SHALL BE PROMULGATED BY THE
45 DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO THIS PARAGRAPH;

46 (H) A COMPREHENSIVE DEMOGRAPHIC, ECONOMIC AND PHYSICAL DESCRIPTION OF
47 THE COMMUNITY WITHIN WHICH THE FACILITY IS LOCATED, WITHIN A HALF-MILE
48 RADIUS OF THE LOCATION OF THE PROPOSED FACILITY, COMPARED AND CONTRASTED
49 WITH THE COUNTY IN WHICH THE FACILITY IS PROPOSED AND WITH ADJACENT
50 COMMUNITIES WITHIN SUCH COUNTY, INCLUDING REASONABLY AVAILABLE DATA ON
51 POPULATION, RACIAL AND ETHNIC CHARACTERISTICS, INCOME LEVELS, OPEN
52 SPACE, AND PUBLIC HEALTH DATA, INCLUDING AVAILABLE DEPARTMENT OF PUBLIC
53 HEALTH DATA ON INCIDENTS OF ASTHMA AND CANCER PROVIDED THAT SUCH
54 DESCRIPTION AND COMPARISON SHALL BE IN ACCORDANCE WITH RULES AND REGU-
55 LATIONS PROMULGATED PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION;

(I) A DESCRIPTION AND EVALUATION OF REASONABLE AND AVAILABLE ALTERNATE LOCATIONS TO THE PROPOSED FACILITY, IF ANY; A DESCRIPTION OF THE COMPARATIVE ADVANTAGES AND DISADVANTAGES AS APPROPRIATE; AND A STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED LOCATION AND SOURCE, AS APPROPRIATE, IS BEST SUITED, AMONG THE ALTERNATIVES CONSIDERED, TO PROMOTE PUBLIC HEALTH AND WELFARE, INCLUDING THE RECREATIONAL AND OTHER CONCURRENT USES WHICH THE SITE MAY SERVE, PROVIDED THAT THE INFORMATION REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE NO MORE EXTENSIVE THAN REQUIRED UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW;

(J) FOR PROPOSED WIND-POWERED FACILITIES, THE EXPECTED ENVIRONMENTAL IMPACTS OF THE FACILITY ON AVIAN AND BAT SPECIES BASED ON PRE-CONSTRUCTION STUDIES CONDUCTED PURSUANT TO PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE; AND A PROPOSED PLAN TO AVOID OR, WHERE UNAVOIDABLE, MINIMIZE AND MITIGATE ANY SUCH IMPACTS DURING CONSTRUCTION AND OPERATION OF THE FACILITY BASED ON EXISTING INFORMATION AND RESULTS OF POST-CONSTRUCTION MONITORING PROPOSED IN THE PLAN;

(K) AN ANALYSIS OF THE POTENTIAL IMPACT THAT THE PROPOSED FACILITY WILL HAVE ON THE WHOLESALE GENERATION MARKETS, BOTH GENERALLY AND FOR THE LOCATION-BASED MARKET IN WHICH THE FACILITY IS PROPOSED, AS WELL AS THE POTENTIAL IMPACT OF THE PROPOSED FACILITY ON FUEL COSTS;

(L) A STATEMENT DEMONSTRATING THAT THE FACILITY IS REASONABLY CONSISTENT WITH THE MOST RECENT STATE ENERGY PLAN, INCLUDING, BUT NOT LIMITED TO, IMPACTS ON FUEL DIVERSITY, REGIONAL REQUIREMENTS FOR CAPACITY, ELECTRIC TRANSMISSION AND FUEL DELIVERY CONSTRAINTS AND OTHER ISSUES AS APPROPRIATE, INCLUDING THE COMPARATIVE ADVANTAGES AND DISADVANTAGES OF REASONABLE AND AVAILABLE ALTERNATE LOCATIONS OR PROPERTIES IDENTIFIED FOR POWER PLANT CONSTRUCTION, AND A STATEMENT OF THE REASONS WHY THE PROPOSED LOCATION AND SOURCE IS BEST SUITED, AMONG THE ALTERNATIVES IDENTIFIED, TO PROMOTE PUBLIC HEALTH AND WELFARE;

(M) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR AS MAY BE REQUIRED BY THE BOARD. COPIES OF THE APPLICATION, INCLUDING THE REQUIRED INFORMATION, SHALL BE FILED WITH THE BOARD AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION; AND

2. EACH APPLICATION SHALL BE ACCOMPANIED BY PROOF OF SERVICE, IN SUCH MANNER AS THE BOARD SHALL PRESCRIBE, OF:

(A) A COPY OF SUCH APPLICATION ON (I) EACH MUNICIPALITY IN WHICH ANY PORTION OF SUCH FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED. SUCH COPY TO A MUNICIPALITY SHALL BE ADDRESSED TO THE CHIEF EXECUTIVE OFFICER THEREOF AND SHALL SPECIFY THE DATE ON OR ABOUT WHICH THE APPLICATION IS TO BE FILED;

(II) EACH MEMBER OF THE BOARD;

(III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

(IV) THE SECRETARY OF STATE;

(V) THE ATTORNEY GENERAL;

(VI) THE DEPARTMENT OF TRANSPORTATION;

(VII) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION;

(VIII) A LIBRARY SERVING THE DISTRICT OF EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY PORTION OF THE FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED;

(IX) IN THE EVENT THAT SUCH FACILITY OR ANY PORTION THEREOF AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED IS LOCATED WITHIN THE ADIRONDACK PARK, AS DEFINED IN SUBDIVISION ONE OF SECTION 9-0101 OF THE ENVIRONMENTAL CONSERVATION LAW, THE ADIRONDACK PARK AGENCY; AND

(X) THE PUBLIC INFORMATION COORDINATOR FOR PLACEMENT ON THE WEBSITE OF THE DEPARTMENT; AND

1 (B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICI-
2 PALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARA-
3 GRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE
4 GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON
5 OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE
6 PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPA-
7 PERS, INCLUDING LOCAL COMMUNITY AND GENERAL CIRCULATION NEWSPAPERS, AS
8 WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICATION, IN
9 PLAIN LANGUAGE, IN ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETER-
10 MINED BY THE BOARD BY A SIGNIFICANT PORTION OF THE POPULATION IN THE
11 COMMUNITY, THAT DESCRIBES THE PROPOSED FACILITY AND ITS LOCATION, THE
12 RANGE OF POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS OF EACH POLLUTANT,
13 THE APPLICATION AND REVIEW PROCESS, AND A CONTACT PERSON, WITH PHONE
14 NUMBER AND ADDRESS, FROM WHOM INFORMATION WILL BE AVAILABLE AS THE
15 APPLICATION PROCEEDS;

16 (II) EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY
17 PORTION OF THE FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNA-
18 TIVE LOCATION LISTED; AND

19 (III) PERSONS WHO HAVE FILED A STATEMENT WITH THE SECRETARY WITHIN THE
20 PAST TWELVE MONTHS THAT THEY WISH TO RECEIVE ALL SUCH NOTICES CONCERNING
21 FACILITIES IN THE AREA IN WHICH THE FACILITY IS TO BE LOCATED AS
22 PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED.

23 3. INADVERTENT FAILURE OF SERVICE ON ANY OF THE MUNICIPALITIES,
24 PERSONS, AGENCIES, BODIES OR COMMISSIONS NAMED IN SUBDIVISION TWO OF
25 THIS SECTION SHALL NOT BE JURISDICTIONAL AND MAY BE CURED PURSUANT TO
26 REGULATIONS OF THE BOARD DESIGNED TO AFFORD SUCH PERSONS ADEQUATE NOTICE
27 TO ENABLE THEM TO PARTICIPATE EFFECTIVELY IN THE PROCEEDING. IN ADDI-
28 TION, THE BOARD MAY, AFTER FILING, REQUIRE THE APPLICANT TO SERVE NOTICE
29 OF THE APPLICATION OR COPIES THEREOF OR BOTH UPON SUCH OTHER PERSONS AND
30 FILE PROOF THEREOF AS THE BOARD MAY DEEM APPROPRIATE.

31 4. THE BOARD SHALL PRESCRIBE THE FORM AND CONTENT OF AN APPLICATION
32 FOR AN AMENDMENT OF A CERTIFICATE TO BE ISSUED PURSUANT TO THIS ARTICLE.
33 NOTICE OF SUCH AN APPLICATION SHALL BE GIVEN AS SET FORTH IN SUBDIVISION
34 TWO OF THIS SECTION.

35 5. IF A REASONABLE AND AVAILABLE ALTERNATE LOCATION NOT LISTED IN THE
36 APPLICATION IS PROPOSED IN THE CERTIFICATION PROCEEDING, NOTICE OF SUCH
37 PROPOSED ALTERNATIVE SHALL BE GIVEN AS SET FORTH IN SUBDIVISION TWO OF
38 THIS SECTION.

39 6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT (I)
40 EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF CAPACITY,
41 BUT NO MORE THAN FOUR HUNDRED THOUSAND DOLLARS, (II) AND FOR FACILITIES
42 THAT WILL REQUIRE STORAGE OR DISPOSAL OF FUEL WASTE BYPRODUCT AN ADDI-
43 TIONAL FEE OF FIVE HUNDRED DOLLARS FOR EACH THOUSAND KILOWATT OF CAPACI-
44 TY, BUT NO MORE THAN FIFTY THOUSAND DOLLARS SHALL BE DEPOSITED IN THE
45 INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-KKKK OF
46 THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION, TO
47 DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER LOCAL PARTIES TO THE
48 PROCEEDING (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT) FOR EXPERT
49 WITNESS, CONSULTANT, ADMINISTRATIVE AND LEGAL FEES, PROVIDED, HOWEVER,
50 SUCH EXPENSES SHALL NOT BE AVAILABLE FOR JUDICIAL REVIEW OR LITIGATION.
51 IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE APPLICATION, THE APPLICA-
52 TION IS AMENDED IN A MANNER THAT WARRANTS SUBSTANTIAL ADDITIONAL SCRUTI-
53 NY, THE BOARD MAY REQUIRE AN ADDITIONAL INTERVENOR FEE IN AN AMOUNT NOT
54 TO EXCEED SEVENTY-FIVE THOUSAND DOLLARS. THE BOARD SHALL PROVIDE FOR
55 NOTICES, FOR MUNICIPAL AND OTHER LOCAL PARTIES, IN ALL APPROPRIATE
56 LANGUAGES. ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT AFTER THE

1 BOARD'S JURISDICTION OVER AN APPLICATION HAS CEASED SHALL BE RETURNED TO
2 THE APPLICANT.

3 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
4 BOARD SHALL PROVIDE BY RULES AND REGULATIONS FOR THE MANAGEMENT OF THE
5 INTERVENOR ACCOUNT AND FOR DISBURSEMENTS FROM THE ACCOUNT, WHICH RULES
6 AND REGULATIONS SHALL BE CONSISTENT WITH THE PURPOSE OF THIS SECTION TO
7 MAKE AVAILABLE TO MUNICIPAL PARTIES AT LEAST ONE-HALF OF THE AMOUNT OF
8 THE INTERVENOR ACCOUNT AND FOR USES SPECIFIED IN PARAGRAPH (A) OF THIS
9 SUBDIVISION. IN ADDITION, THE BOARD SHALL PROVIDE OTHER LOCAL PARTIES UP
10 TO ONE-HALF OF THE AMOUNT OF THE INTERVENOR ACCOUNT, PROVIDED, HOWEVER,
11 THAT THE BOARD SHALL ASSURE THAT THE PURPOSES FOR WHICH MONEYS IN THE
12 INTERVENOR ACCOUNT WILL BE EXPENDED WILL CONTRIBUTE TO AN INFORMED DECISION AS TO THE APPROPRIATENESS OF THE SITE AND FACILITY AND ARE MADE
13 AVAILABLE ON AN EQUITABLE BASIS IN A MANNER WHICH FACILITATES BROAD
14 PUBLIC PARTICIPATION.

15
16 S 165. HEARING SCHEDULE. 1. AFTER THE RECEIPT OF AN APPLICATION FILED
17 PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE CHAIR OF
18 THE BOARD SHALL, WITHIN SIXTY DAYS OF SUCH RECEIPT, DETERMINE WHETHER
19 THE APPLICATION COMPLIES WITH SUCH SECTION AND UPON FINDING THAT THE
20 APPLICATION SO COMPLIES, FIX A DATE FOR THE COMMENCEMENT OF A PUBLIC
21 HEARING. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL ADVISE THE
22 BOARD WITHIN SAID SIXTY DAY PERIOD WHETHER AN APPLICATION FILED PURSUANT
23 TO PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION CONTAINS SUFFICIENT
24 INFORMATION MEETING THE REQUIREMENTS SPECIFIED UNDER SUBPARAGRAPHS (I)
25 THROUGH (IV) OF SUCH PARAGRAPH TO QUALIFY FOR THE EXPEDITED PROCEDURE
26 PROVIDED FOR IN SUCH PARAGRAPH. NO LATER THAN THE DATE OF THE DETERMINATION
27 THAT AN APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR
28 OF THIS ARTICLE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL
29 INITIATE ITS REVIEW PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL
30 PERMITTING AUTHORITY. THE CHAIR OF THE BOARD MAY REQUIRE THE
31 FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN APPLICATION
32 BEFORE OR DURING THE HEARINGS.

33 2. WITHIN A REASONABLE TIME AFTER THE DATE HAS BEEN FIXED BY THE CHAIR
34 FOR COMMENCEMENT OF A PUBLIC HEARING, THE PRESIDING EXAMINER SHALL HOLD
35 A PREHEARING CONFERENCE TO EXPEDITE THE ORDERLY CONDUCT AND DISPOSITION
36 OF THE HEARING, TO SPECIFY THE ISSUES, TO OBTAIN STIPULATIONS AS TO
37 MATTERS NOT DISPUTED, AND TO DEAL WITH SUCH OTHER MATTERS AS THE PRESIDING
38 EXAMINER MAY DEEM PROPER. THEREAFTER, THE PRESIDING EXAMINER SHALL
39 ISSUE AN ORDER IDENTIFYING THE ISSUES TO BE ADDRESSED BY THE PARTIES
40 PROVIDED, HOWEVER, THAT NO SUCH ORDER SHALL PRECLUDE CONSIDERATION OF
41 ADDITIONAL ISSUES OR REQUESTS FOR ADDITIONAL SUBMISSIONS, DOCUMENTATION
42 OR TESTIMONY AT A HEARING WHICH WARRANT CONSIDERATION IN ORDER TO DEVELOP
43 AN ADEQUATE RECORD AS DETERMINED BY AN ORDER OF THE BOARD. THE
44 PRESIDING EXAMINER SHALL BE PERMITTED A REASONABLE TIME TO RESPOND TO
45 ANY AND ALL INTERLOCUTORY MOTIONS AND APPEALS, BUT IN NO CASE SHALL SUCH
46 TIME EXTEND BEYOND FORTY-FIVE DAYS.

47 3. ALL PARTIES SHALL BE PREPARED TO PROCEED IN AN EXPEDITIOUS MANNER
48 AT THE HEARING SO THAT IT MAY PROCEED REGULARLY UNTIL COMPLETION, EXCEPT
49 THAT HEARINGS SHALL BE OF SUFFICIENT DURATION TO PROVIDE ADEQUATE OPPORTUNITY
50 TO HEAR DIRECT EVIDENCE AND REBUTTAL EVIDENCE FROM RESIDENTS OF
51 THE AREA AFFECTED BY THE PROPOSED MAJOR ELECTRIC GENERATING FACILITY. TO
52 THE EXTENT PRACTICABLE, THE PLACE OF THE HEARING SHALL BE DESIGNATED BY
53 THE PRESIDING EXAMINER AT A LOCATION WITHIN TWO MILES OF THE PROPOSED
54 LOCATION OF THE FACILITY.

55 4. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION,
56 PROCEEDINGS ON AN APPLICATION SHALL BE COMPLETED IN ALL RESPECTS IN A

1 MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL
2 PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN
3 TWELVE MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIR THAT AN
4 APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTI-
5 CLE; PROVIDED, HOWEVER, THE BOARD MAY EXTEND THE DEADLINE IN EXTRAOR-
6 DINARY CIRCUMSTANCES BY NO MORE THAN SIX MONTHS IN ORDER TO GIVE CONSID-
7 ERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE
8 BOARD MUST RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMEN-
9 TIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF,
10 AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A
11 MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY
12 BE EXTENDED BY NO MORE THAN SIX MONTHS, UNLESS SUCH DEADLINE IS WAIVED
13 BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

14 (B) PROCEEDINGS ON AN APPLICATION BY AN OWNER OF AN EXISTING MAJOR
15 ELECTRIC GENERATING FACILITY TO MODIFY SUCH EXISTING FACILITY OR SITE A
16 NEW MAJOR ELECTRIC GENERATING FACILITY ADJACENT OR CONTIGUOUS TO SUCH
17 EXISTING FACILITY, SHALL BE COMPLETED IN ALL RESPECTS IN A MANNER
18 CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING
19 AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN SIX MONTHS
20 FROM THE DATE OF A DETERMINATION BY THE CHAIR THAT SUCH APPLICATION
21 COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, WHENEVER
22 SUCH APPLICATION DEMONSTRATES THAT THE OPERATION OF THE MODIFIED FACILI-
23 TY, OR OF THE EXISTING FACILITY AND NEW FACILITY IN COMBINATION, WOULD
24 RESULT IN:

25 (I) A DECREASE IN THE RATE OF EMISSION OF EACH OF THE RELEVANT SITING
26 AIR CONTAMINANTS. FOR FACILITIES THAT ARE PARTIALLY REPLACED OR MODI-
27 FIED, THE PERCENTAGE DECREASE SHALL BE CALCULATED BY COMPARING THE
28 POTENTIAL TO EMIT OF EACH SUCH CONTAMINANT OF THE EXISTING UNIT THAT IS
29 TO BE MODIFIED OR REPLACED AS OF THE DATE OF APPLICATION UNDER THIS
30 ARTICLE TO THE FUTURE POTENTIAL TO EMIT EACH SUCH CONTAMINANT OF THE
31 MODIFIED OR REPLACEMENT UNIT AS PROPOSED IN THE APPLICATION. FOR FACILI-
32 TIES THAT ARE SITED PHYSICALLY ADJACENT OR CONTIGUOUS TO AN EXISTING
33 FACILITY, THE PERCENTAGE DECREASE SHALL BE CALCULATED BY COMPARING THE
34 POTENTIAL TO EMIT OF EACH SUCH CONTAMINANT OF THE EXISTING FACILITY AS
35 OF THE DATE OF APPLICATION UNDER THIS ARTICLE, TO THE FUTURE POTENTIAL
36 TO EMIT EACH SUCH CONTAMINANT OF THE EXISTING AND NEW FACILITY COMBINED
37 AS PROPOSED IN THE APPLICATION;

38 (II) A REDUCTION OF THE TOTAL ANNUAL EMISSIONS OF EACH OF THE RELEVANT
39 SITING AIR CONTAMINANTS EMITTED BY THE EXISTING FACILITY. THE PERCENT-
40 AGE REDUCTION SHALL BE CALCULATED BY COMPARING (ON A POUNDS-PER-YEAR
41 BASIS) THE PAST ACTUAL EMISSIONS OF EACH OF THE RELEVANT SITING AIR
42 CONTAMINANTS EMITTED BY THE EXISTING FACILITY AVERAGED OVER THE THREE
43 YEARS PRECEDING THE DATE OF APPLICATION UNDER THIS ARTICLE, TO THE ANNU-
44 ALIZED POTENTIAL TO EMIT EACH SUCH CONTAMINANT OF THE MODIFIED FACILITY
45 OR OF THE COMBINED EXISTING AND NEW FACILITY AS PROPOSED IN THE APPLICA-
46 TION;

47 (III) INTRODUCTION OF A NEW COOLING WATER INTAKE STRUCTURE WHERE SUCH
48 STRUCTURE WITHDRAWS WATER AT A RATE EQUAL TO OR LESS THAN CLOSED-CYCLE
49 COOLING; AND

50 (IV) A LOWER HEAT RATE THAN THE HEAT RATE OF THE EXISTING FACILITY.

51 THE APPLICANT SHALL SUPPLY THE DETAILS OF THE ANALYSIS IN THE APPLICA-
52 TION AND SUCH SUPPORTING INFORMATION, AS MAY BE REQUESTED BY THE BOARD
53 OR, IN THE EXERCISE OF FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL
54 PERMITTING AUTHORITY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
55 NECESSARY TO SHOW COMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPHS (I)
56 THROUGH (IV) OF THIS PARAGRAPH. THE BOARD MAY EXTEND THE DEADLINE IN

EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

5. IF AN APPLICATION FOR AN AMENDMENT OF A CERTIFICATE PROPOSING A CHANGE IN THE FACILITY IS LIKELY TO RESULT IN ANY MATERIAL INCREASE IN ANY ENVIRONMENTAL IMPACT OF THE FACILITY OR A SUBSTANTIAL CHANGE IN THE LOCATION OF ALL OR A PORTION OF SUCH FACILITY, A HEARING SHALL BE HELD IN THE SAME MANNER AS A HEARING ON AN APPLICATION FOR A CERTIFICATE. THE BOARD SHALL PROMULGATE RULES, REGULATIONS AND STANDARDS UNDER WHICH IT SHALL DETERMINE WHETHER HEARINGS ARE REQUIRED UNDER THIS SUBDIVISION AND SHALL MAKE SUCH DETERMINATIONS.

S 166. PARTIES TO A CERTIFICATION PROCEEDING. 1. THE PARTIES TO THE CERTIFICATION PROCEEDINGS SHALL INCLUDE:

- (A) THE APPLICANT;
- (B) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;
- (C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;
- (D) THE DEPARTMENT OF HEALTH;
- (E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;
- (F) THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;
- (G) THE DEPARTMENT OF STATE;
- (H) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION;
- (I) WHERE THE FACILITY OR ANY PORTION THEREOF OR OF ANY ALTERNATE IS TO BE LOCATED WITHIN THE ADIRONDACK PARK, AS DEFINED IN SUBDIVISION ONE OF SECTION 9-0101 OF THE ENVIRONMENTAL CONSERVATION LAW, THE ADIRONDACK PARK AGENCY;

- (J) A MUNICIPALITY ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, IF IT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BE A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR THE FILING OF THE APPLICATION; ANY MUNICIPALITY ENTITLED TO BE A PARTY HEREIN AND SEEKING TO ENFORCE ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR REGULATION OTHERWISE APPLICABLE SHALL PRESENT EVIDENCE IN SUPPORT THEREOF OR SHALL BE BARRED FROM THE ENFORCEMENT THEREOF;

- (K) ANY INDIVIDUAL RESIDENT IN A MUNICIPALITY ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF HE OR SHE HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BE A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION;

- (1) ANY NON-PROFIT CORPORATION OR ASSOCIATION, FORMED IN WHOLE OR IN PART TO PROMOTE CONSERVATION OR NATURAL BEAUTY, TO PROTECT THE ENVIRONMENT, PERSONAL HEALTH OR OTHER BIOLOGICAL VALUES, TO PRESERVE HISTORICAL SITES, TO PROMOTE CONSUMER INTERESTS, TO REPRESENT COMMERCIAL AND INDUSTRIAL GROUPS OR TO PROMOTE THE ORDERLY DEVELOPMENT OF ANY AREA IN WHICH THE FACILITY IS TO BE LOCATED, IF IT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION;

- (M) ANY OTHER MUNICIPALITY OR RESIDENT OF SUCH MUNICIPALITY LOCATED WITHIN A FIVE MILE RADIUS OF SUCH PROPOSED FACILITY, IF IT OR THE RESIDENT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY,

1 WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS
2 THE DATE FOR FILING OF THE APPLICATION;

3 (N) ANY OTHER MUNICIPALITY OR RESIDENT OF SUCH MUNICIPALITY WHICH THE
4 BOARD IN ITS DISCRETION FINDS TO HAVE AN INTEREST IN THE PROCEEDING
5 BECAUSE OF THE POTENTIAL ENVIRONMENTAL EFFECTS ON SUCH MUNICIPALITY OR
6 PERSON, IF THE MUNICIPALITY OR PERSON HAS FILED WITH THE BOARD A NOTICE
7 OF INTENT TO BECOME A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN
8 IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION,
9 TOGETHER WITH AN EXPLANATION OF THE POTENTIAL ENVIRONMENTAL EFFECTS ON
10 SUCH MUNICIPALITY OR PERSON; AND

11 (O) SUCH OTHER PERSONS OR ENTITIES AS THE BOARD MAY AT ANY TIME DEEM
12 APPROPRIATE, WHO MAY PARTICIPATE IN ALL SUBSEQUENT STAGES OF THE
13 PROCEEDING.

14 2. THE DEPARTMENT SHALL DESIGNATE MEMBERS OF ITS STAFF WHO SHALL
15 PARTICIPATE AS A PARTY IN PROCEEDINGS UNDER THIS ARTICLE.

16 3. ANY PERSON MAY MAKE A LIMITED APPEARANCE IN THE PROCEEDING BY
17 FILING A STATEMENT OF HIS OR HER INTENT TO LIMIT HIS OR HER APPEARANCE
18 IN WRITING AT ANY TIME PRIOR TO THE COMMENCEMENT OF THE HEARING. ALL
19 PAPERS AND MATTERS FILED BY A PERSON MAKING A LIMITED APPEARANCE SHALL
20 BECOME PART OF THE RECORD. NO PERSON MAKING A LIMITED APPEARANCE SHALL
21 BE A PARTY OR SHALL HAVE THE RIGHT TO PRESENT TESTIMONY OR CROSS-EXAMINE
22 WITNESSES OR PARTIES.

23 4. THE PRESIDING OFFICER MAY FOR GOOD CAUSE SHOWN, PERMIT A MUNICI-
24 PALITY OR OTHER PERSON ENTITLED TO BECOME A PARTY UNDER SUBDIVISION ONE
25 OF THIS SECTION, BUT WHICH HAS FAILED TO FILE THE REQUISITE NOTICE OF
26 INTENT WITHIN THE TIME REQUIRED, TO BECOME A PARTY, AND TO PARTICIPATE
27 IN ALL SUBSEQUENT STAGES OF THE PROCEEDING.

28 S 167. CONDUCT OF HEARING. 1. (A) THE HEARING SHALL BE CONDUCTED IN AN
29 EXPEDITIOUS MANNER BY A PRESIDING EXAMINER APPOINTED BY THE DEPARTMENT.
30 AN ASSOCIATE HEARING EXAMINER SHALL BE APPOINTED BY THE DEPARTMENT OF
31 ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE
32 PUBLIC HEARING. THE ASSOCIATE EXAMINER SHALL ATTEND ALL HEARINGS AS
33 SCHEDULED BY THE PRESIDING EXAMINER AND SHALL ASSIST THE PRESIDING EXAM-
34 INER IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND
35 MATERIAL MATTERS. THE CONCLUSIONS AND RECOMMENDATIONS OF THE ASSOCIATE
36 EXAMINER SHALL BE INCORPORATED IN THE RECOMMENDED DECISION OF THE
37 PRESIDING EXAMINER, UNLESS THE ASSOCIATE EXAMINER PREFERS TO SUBMIT A
38 SEPARATE REPORT OF DISSENTING OR CONCURRING CONCLUSIONS AND RECOMMENDA-
39 TIONS. IN THE EVENT THAT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION
40 ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY
41 UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE
42 FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, OR SECTION 15-1503 AND
43 ARTICLE NINETEEN OF THE ENVIRONMENTAL CONSERVATION LAW, THE RECORD IN
44 THE PROCEEDING AND THE ASSOCIATE EXAMINER'S CONCLUSIONS AND RECOMMENDA-
45 TIONS SHALL, INsofar AS IS CONSISTENT WITH FEDERALLY DELEGATED OR
46 APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE
47 DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR
48 NOT TO ISSUE SUCH PERMITS.

49 (B) THE TESTIMONY PRESENTED AT A HEARING MAY BE PRESENTED IN WRITING.
50 ORAL TESTIMONY MAY BE PRESENTED AT ANY PUBLIC STATEMENT HEARING
51 CONDUCTED BY THE BOARD FOR THE TAKING OF UNSWORN STATEMENTS. THE BOARD
52 MAY REQUIRE ANY STATE AGENCY TO PROVIDE EXPERT TESTIMONY ON SPECIFIC
53 SUBJECTS WHERE ITS PERSONNEL HAVE THE REQUISITE EXPERTISE AND SUCH
54 TESTIMONY IS CONSIDERED NECESSARY TO THE DEVELOPMENT OF AN ADEQUATE
55 RECORD. ALL TESTIMONY AND INFORMATION PRESENTED BY THE APPLICANT, ANY
56 STATE AGENCY OR OTHER PARTY SHALL BE SUBJECT TO DISCOVERY AND CROSS-EXA-

1 MINATION. A RECORD SHALL BE MADE OF THE HEARING AND OF ALL TESTIMONY
2 TAKEN AND THE CROSS-EXAMINATIONS THEREON. THE RULES OF EVIDENCE APPLICA-
3 BLE TO PROCEEDINGS BEFORE A COURT SHALL NOT APPLY. THE PRESIDING EXAMIN-
4 ER MAY PROVIDE FOR THE CONSOLIDATION OF THE REPRESENTATION OF PARTIES,
5 OTHER THAN GOVERNMENTAL BODIES OR AGENCIES, HAVING SIMILAR INTERESTS. IN
6 THE CASE OF SUCH A CONSOLIDATION, THE RIGHT TO COUNSEL OF ITS OWN CHOOS-
7 ING SHALL BE PRESERVED TO EACH PARTY TO THE PROCEEDING PROVIDED THAT THE
8 CONSOLIDATED GROUP MAY BE REQUIRED TO BE HEARD THROUGH SUCH REASONABLE
9 NUMBER OF COUNSEL AS THE PRESIDING EXAMINER SHALL DETERMINE. APPROPRI-
10 ATE REGULATIONS SHALL BE ISSUED BY THE BOARD TO PROVIDE FOR PREHEARING
11 DISCOVERY PROCEDURES BY PARTIES TO A PROCEEDING, CONSOLIDATION OF THE
12 REPRESENTATION OF PARTIES, THE EXCLUSION OF IRRELEVANT, REPETITIVE,
13 REDUNDANT OR IMMATERIAL EVIDENCE, AND THE REVIEW OF RULINGS BY PRESIDING
14 EXAMINERS.

15 2. A COPY OF THE RECORD INCLUDING, BUT NOT LIMITED TO, TESTIMONY,
16 BRIEFS AND HEARING TESTIMONY SHALL BE MADE AVAILABLE BY THE BOARD WITHIN
17 THIRTY DAYS OF THE CLOSE OF THE EVIDENTIARY RECORD FOR EXAMINATION BY
18 THE PUBLIC, AND SHALL BE MADE AVAILABLE ON THE DEPARTMENT'S WEBSITE.

19 3. THE CHAIR OF THE BOARD MAY ENTER INTO AN AGREEMENT WITH AN AGENCY
20 OR DEPARTMENT OF THE UNITED STATES HAVING CONCURRENT JURISDICTION OVER
21 ALL OR PART OF THE LOCATION, CONSTRUCTION, OR OPERATION OF A MAJOR ELEC-
22 TRIC GENERATING FACILITY SUBJECT TO THIS ARTICLE WITH RESPECT TO PROVID-
23 ING FOR JOINT PROCEDURES AND A JOINT HEARING OF COMMON ISSUES ON A
24 COMBINED RECORD, PROVIDED THAT SUCH AGREEMENT SHALL NOT DIMINISH THE
25 RIGHTS ACCORDED TO ANY PARTY UNDER THIS ARTICLE.

26 4. THE PRESIDING EXAMINER SHALL ALLOW TESTIMONY TO BE RECEIVED ON
27 REASONABLE AND AVAILABLE ALTERNATE LOCATIONS FOR THE PROPOSED FACILITY,
28 ALTERNATE ENERGY SUPPLY SOURCES AND DEMAND-REDUCING MEASURES, PROVIDED
29 NOTICE OF THE INTENT TO SUBMIT SUCH TESTIMONY SHALL BE GIVEN WITHIN SUCH
30 PERIOD AS THE BOARD SHALL PRESCRIBE BY REGULATION, WHICH PERIOD SHALL BE
31 NOT LESS THAN THIRTY NOR MORE THAN SIXTY DAYS AFTER THE COMMENCEMENT OF
32 THE HEARING. NEVERTHELESS, IN ITS DISCRETION, THE BOARD MAY THEREAFTER
33 CAUSE TO BE CONSIDERED OTHER REASONABLE AND AVAILABLE LOCATIONS FOR THE
34 PROPOSED FACILITY, ALTERNATE ENERGY SUPPLY SOURCES AND, WHERE APPROPRI-
35 ATE, DEMAND-REDUCING MEASURES.

36 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION,
37 THE BOARD MAY MAKE A PROMPT DETERMINATION ON THE SUFFICIENCY OF THE
38 APPLICANT'S CONSIDERATION AND EVALUATION OF REASONABLE ALTERNATIVES TO
39 ITS PROPOSED TYPE OF MAJOR ELECTRIC GENERATING FACILITY AND ITS PROPOSED
40 LOCATION FOR THAT FACILITY, AS REQUIRED PURSUANT TO PARAGRAPH (I) OF
41 SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,
42 BEFORE RESOLUTION OF OTHER ISSUES PERTINENT TO A FINAL DETERMINATION ON
43 THE APPLICATION; PROVIDED, HOWEVER, THAT ALL INTERESTED PARTIES HAVE
44 REASONABLE OPPORTUNITY TO QUESTION AND PRESENT EVIDENCE IN SUPPORT OF OR
45 AGAINST THE MERITS OF THE APPLICANT'S CONSIDERATION AND EVALUATION OF
46 SUCH ALTERNATIVES, AS REQUIRED PURSUANT TO PARAGRAPH (I) OF SUBDIVISION
47 ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, SO THAT THE BOARD
48 IS ABLE TO DECIDE, IN THE FIRST INSTANCE, WHETHER THE APPLICANT'S
49 PROPOSAL IS PREFERABLE TO ALTERNATIVES.

50 S 168. BOARD DECISIONS. 1. THE BOARD SHALL MAKE THE FINAL DECISION ON
51 AN APPLICATION UNDER THIS ARTICLE FOR A CERTIFICATE OR AMENDMENT THERE-
52 OF, UPON THE RECORD MADE BEFORE THE PRESIDING EXAMINER, INCLUDING ANY
53 BRIEFS OR EXCEPTIONS TO ANY RECOMMENDED DECISION OF SUCH EXAMINER OR TO
54 ANY REPORT OF THE ASSOCIATE EXAMINER, AND AFTER HEARING SUCH ORAL ARGU-
55 MENT AS THE BOARD SHALL DETERMINE. EXCEPT FOR GOOD CAUSE SHOWN TO THE
56 SATISFACTION OF THE BOARD, A DETERMINATION UNDER SUBDIVISION FIVE OF

SECTION ONE HUNDRED SIXTY-SEVEN OF THIS ARTICLE THAT THE APPLICANT'S PROPOSAL IS PREFERABLE TO ALTERNATIVES SHALL BE FINAL. SUCH A DETERMINATION SHALL BE SUBJECT TO REHEARING AND REVIEW ONLY AFTER THE FINAL DECISION ON AN APPLICATION IS RENDERED.

2. THE BOARD SHALL NOT GRANT A CERTIFICATE OR AMENDMENT THEREOF FOR THE CONSTRUCTION OR OPERATION OF A FACILITY, EITHER AS PROPOSED OR AS MODIFIED BY THE BOARD, WITHOUT MAKING EXPLICIT FINDINGS REGARDING THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS OF THE CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING THE CUMULATIVE ENVIRONMENTAL IMPACTS OF THE CONSTRUCTION AND OPERATION OF RELATED FACILITIES SUCH AS ELECTRIC LINES, GAS LINES, WATER SUPPLY LINES, WASTE WATER OR OTHER SEWAGE TREATMENT FACILITIES, COMMUNICATIONS AND RELAY FACILITIES, ACCESS ROADS, RAIL FACILITIES, OR STEAM LINES, INCLUDING IMPACTS ON:

(A) ECOLOGY, AIR, GROUND AND SURFACE WATER, WILDLIFE, AND HABITAT;

(B) PUBLIC HEALTH AND SAFETY;

(C) CULTURAL, HISTORIC, AND RECREATIONAL RESOURCES, INCLUDING AESTHETICS AND SCENIC VALUES; AND

(D) TRANSPORTATION, COMMUNICATION, UTILITIES AND OTHER INFRASTRUCTURE. SUCH FINDINGS SHALL INCLUDE THE CUMULATIVE IMPACT OF EMISSIONS ON THE LOCAL COMMUNITY INCLUDING WHETHER THE CONSTRUCTION AND OPERATION OF THE FACILITY RESULTS IN A SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACT, IN ACCORDANCE WITH REGULATIONS PROMULGATED PURSUANT TO PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION REGARDING ENVIRONMENTAL JUSTICE ISSUES.

3. THE BOARD MAY NOT GRANT A CERTIFICATE FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERATING FACILITY, EITHER AS PROPOSED OR AS MODIFIED BY THE BOARD, UNLESS THE BOARD DETERMINES THAT:

(A) THE FACILITY IS A BENEFICIAL ADDITION TO OR SUBSTITUTION FOR THE ELECTRIC GENERATION CAPACITY OF THE STATE; AND

(B) THE CONSTRUCTION AND OPERATION OF THE FACILITY WILL SERVE THE PUBLIC INTEREST; AND

(C) THE ADVERSE ENVIRONMENTAL EFFECTS OF THE CONSTRUCTION AND OPERATION OF THE FACILITY WILL BE MINIMIZED OR AVOIDED TO THE MAXIMUM EXTENT PRACTICABLE; AND

(D) IF THE BOARD FINDS THAT THE FACILITY RESULTS IN OR CONTRIBUTES TO A SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACT IN THE COMMUNITY IN WHICH THE FACILITY WOULD BE LOCATED, THE APPLICANT WILL AVOID, OFFSET OR MINIMIZE THE IMPACTS CAUSED BY THE FACILITY UPON THE LOCAL COMMUNITY FOR THE DURATION THAT THE CERTIFICATE IS ISSUED TO THE MAXIMUM EXTENT PRACTICABLE USING VERIFIABLE MEASURES; AND

(E) THE FACILITY IS DESIGNED TO OPERATE IN COMPLIANCE WITH APPLICABLE STATE AND LOCAL LAWS AND REGULATIONS ISSUED THEREUNDER CONCERNING, AMONG OTHER MATTERS, THE ENVIRONMENT, PUBLIC HEALTH AND SAFETY, ALL OF WHICH SHALL BE BINDING UPON THE APPLICANT, EXCEPT THAT THE BOARD MAY ELECT NOT TO APPLY, IN WHOLE OR IN PART, ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR ANY REGULATION ISSUED THEREUNDER OR ANY LOCAL STANDARD OR REQUIREMENT, INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO THE INTERCONNECTION TO AND USE OF WATER, ELECTRIC, SEWER, TELECOMMUNICATION, FUEL AND STEAM LINES IN PUBLIC RIGHTS OF WAY, WHICH WOULD BE OTHERWISE APPLICABLE IF IT FINDS THAT, AS APPLIED TO THE PROPOSED FACILITY, SUCH IS UNREASONABLY BURDENSOME IN VIEW OF THE EXISTING TECHNOLOGY OR THE NEEDS OF OR COSTS TO RATEPAYERS WHETHER LOCATED INSIDE OR OUTSIDE OF SUCH MUNICIPALITY. THE BOARD SHALL PROVIDE THE MUNICIPALITY AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF SUCH ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER LOCAL ACTION ISSUED THEREUNDER.

1 4. IN MAKING THE DETERMINATIONS REQUIRED IN SUBDIVISION THREE OF THIS
2 SECTION, THE BOARD SHALL CONSIDER:

3 (A) THE STATE OF AVAILABLE TECHNOLOGY;

4 (B) THE NATURE AND ECONOMICS OF REASONABLE ALTERNATIVES;

5 (C) ENVIRONMENTAL IMPACTS FOUND PURSUANT TO SUBDIVISION TWO OF THIS
6 SECTION;

7 (D) THE IMPACT OF CONSTRUCTION AND OPERATION OF RELATED FACILITIES,
8 SUCH AS ELECTRIC LINES, GAS LINES, WATER SUPPLY LINES, WASTE WATER OR
9 OTHER SEWAGE TREATMENT FACILITIES, COMMUNICATIONS AND RELAY FACILITIES,
10 ACCESS ROADS, RAIL FACILITIES, OR STEAM LINES;

11 (E) THE CONSISTENCY OF THE CONSTRUCTION AND OPERATION OF THE FACILITY
12 WITH THE ENERGY POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES AND
13 STRATEGIES CONTAINED IN THE MOST RECENT STATE ENERGY PLAN;

14 (F) THE IMPACT ON COMMUNITY CHARACTER AND WHETHER THE FACILITY WOULD
15 AFFECT COMMUNITIES THAT ARE DISPROPORTIONATELY IMPACTED BY CUMULATIVE
16 LEVELS OF POLLUTANTS; AND

17 (G) SUCH ADDITIONAL SOCIAL, ECONOMIC, VISUAL OR OTHER AESTHETIC, ENVI-
18 RONMENTAL AND OTHER CONSIDERATIONS DEEMED PERTINENT BY THE BOARD.

19 5. THE DEPARTMENT OR THE COMMISSION SHALL MONITOR, ENFORCE AND ADMIN-
20 ISTER COMPLIANCE WITH ANY TERMS AND CONDITIONS SET FORTH IN THE BOARD'S
21 ORDER.

22 6. A COPY OF THE BOARD'S DECISION AND OPINION SHALL BE SERVED ON EACH
23 PARTY ELECTRONICALLY OR BY MAIL.

24 7. FOLLOWING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S
25 DECISION, THE BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE,
26 PROVIDED, HOWEVER, THAT THE PERMANENT BOARD SHALL RETAIN JURISDICTION
27 WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A CERTIF-
28 ICATE.

29 S 169. OPINION TO BE ISSUED WITH DECISION. IN RENDERING A DECISION ON
30 AN APPLICATION FOR A CERTIFICATE, THE BOARD SHALL ISSUE AN OPINION STAT-
31 ING ITS REASONS FOR THE ACTION TAKEN. IF THE BOARD HAS FOUND THAT ANY
32 LOCAL ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER ACTION ISSUED
33 THEREUNDER OR ANY OTHER LOCAL STANDARD OR REQUIREMENT WHICH WOULD BE
34 OTHERWISE APPLICABLE IS UNREASONABLY BURDENSOME PURSUANT TO PARAGRAPH
35 (E) OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS
36 ARTICLE, IT SHALL STATE IN ITS OPINION THE REASONS THEREFOR.

37 S 170. REHEARING AND JUDICIAL REVIEW. 1. ANY PARTY AGGRIEVED BY THE
38 BOARD'S DECISION DENYING OR GRANTING A CERTIFICATE MAY APPLY TO THE
39 BOARD FOR A REHEARING WITHIN THIRTY DAYS AFTER ISSUANCE OF THE AGGRIEV-
40 ING DECISION. ANY SUCH APPLICATION SHALL BE CONSIDERED AND DECIDED BY
41 THE BOARD AND ANY REHEARING SHALL BE COMPLETED AND A DECISION RENDERED
42 THEREON WITHIN NINETY DAYS OF THE EXPIRATION OF THE PERIOD FOR FILING
43 REHEARING PETITIONS, PROVIDED HOWEVER THAT THE BOARD MAY EXTEND THE
44 DEADLINE BY NO MORE THAN NINETY DAYS WHERE A REHEARING IS REQUIRED IF
45 NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE APPLICANT MAY WAIVE SUCH
46 DEADLINE. THEREAFTER SUCH A PARTY MAY OBTAIN JUDICIAL REVIEW OF SUCH
47 DECISION AS PROVIDED IN THIS SECTION. A JUDICIAL PROCEEDING SHALL BE
48 BROUGHT IN THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF
49 NEW YORK IN THE JUDICIAL DEPARTMENT EMBRACING THE COUNTY WHEREIN THE
50 FACILITY IS TO BE LOCATED OR, IF THE APPLICATION IS DENIED, THE COUNTY
51 WHEREIN THE APPLICANT HAS PROPOSED TO LOCATE THE FACILITY. SUCH PROCEED-
52 ING SHALL BE INITIATED BY THE FILING OF A PETITION IN SUCH COURT WITHIN
53 THIRTY DAYS AFTER THE ISSUANCE OF A FINAL DECISION BY THE BOARD UPON THE
54 APPLICATION FOR REHEARING TOGETHER WITH PROOF OF SERVICE OF A DEMAND ON
55 THE BOARD TO FILE WITH SAID COURT A COPY OF A WRITTEN TRANSCRIPT OF THE
56 RECORD OF THE PROCEEDING AND A COPY OF THE BOARD'S DECISION AND OPINION.

1 THE BOARD'S COPY OF SAID TRANSCRIPT, DECISION AND OPINION, SHALL BE
2 AVAILABLE AT ALL REASONABLE TIMES TO ALL PARTIES FOR EXAMINATION WITHOUT
3 COST. UPON RECEIPT OF SUCH PETITION AND DEMAND THE BOARD SHALL FORTHWITH
4 DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S
5 DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF
6 THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS
7 JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND
8 ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR
9 FINDINGS OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL
10 SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND
11 UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE
12 PARTY IN HIS OR HER APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE
13 CONSIDERED BY THE COURT, UNLESS THE FAILURE OR NEGLECT TO URGE SUCH
14 OBJECTION SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE
15 FINDINGS OF FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF
16 SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE
17 AND MATTERS OF JUDICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDIC-
18 TION OF THE APPELLATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE
19 AND ITS JUDGMENT AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE
20 COURT OF APPEALS IN THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS
21 PROVIDED FOR APPEALS IN A SPECIAL PROCEEDING. ALL SUCH PROCEEDINGS SHALL
22 BE HEARD AND DETERMINED BY THE APPELLATE DIVISION OF THE SUPREME COURT
23 AND BY THE COURT OF APPEALS AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL
24 PRECEDENCE OVER ALL OTHER MATTERS.

25 2. THE GROUNDS FOR AND SCOPE OF REVIEW OF THE COURT SHALL BE LIMITED
26 TO WHETHER THE DECISION AND OPINION OF THE BOARD ARE:

27 (A) IN CONFORMITY WITH THE CONSTITUTION, LAWS AND REGULATIONS OF THE
28 STATE AND THE UNITED STATES;

29 (B) SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AND MATTERS OF
30 JUDICIAL NOTICE PROPERLY CONSIDERED AND APPLIED IN THE OPINION;

31 (C) WITHIN THE BOARD'S STATUTORY JURISDICTION OR AUTHORITY;

32 (D) MADE IN ACCORDANCE WITH PROCEDURES SET FORTH IN THIS ARTICLE OR
33 ESTABLISHED BY RULE OR REGULATION PURSUANT TO THIS ARTICLE;

34 (E) ARBITRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION; OR

35 (F) MADE PURSUANT TO A PROCESS THAT AFFORDED MEANINGFUL INVOLVEMENT OF
36 CITIZENS AFFECTED BY THE FACILITY REGARDLESS OF AGE, RACE, COLOR,
37 NATIONAL ORIGIN AND INCOME.

38 3. EXCEPT AS HEREIN PROVIDED ARTICLE SEVENTY-EIGHT OF THE CIVIL PRAC-
39 TICE LAW AND RULES SHALL APPLY TO APPEALS TAKEN HEREUNDER.

40 S 171. JURISDICTION OF COURTS. EXCEPT AS EXPRESSLY SET FORTH IN
41 SECTION ONE HUNDRED SEVENTY OF THIS ARTICLE AND EXCEPT FOR REVIEW BY THE
42 COURT OF APPEALS OF A DECISION OF THE APPELLATE DIVISION OF THE SUPREME
43 COURT AS PROVIDED FOR THEREIN, NO COURT OF THIS STATE SHALL HAVE JURIS-
44 DICTION TO HEAR OR DETERMINE ANY MATTER, CASE OR CONTROVERSY CONCERNING
45 ANY MATTER WHICH WAS OR COULD HAVE BEEN DETERMINED IN A PROCEEDING UNDER
46 THIS ARTICLE OR TO STOP OR DELAY THE CONSTRUCTION OR OPERATION OF A
47 MAJOR ELECTRIC GENERATING FACILITY EXCEPT TO ENFORCE COMPLIANCE WITH
48 THIS ARTICLE OR THE TERMS AND CONDITIONS ISSUED THEREUNDER.

49 S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTAND-
50 ING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY
51 AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY
52 THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER
53 CONDITION FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERAT-
54 ING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE
55 HEREUNDER HAS BEEN FILED, INCLUDING PURSUANT TO PARAGRAPH (E) OF SUBDI-
56 VISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE, ANY

1 SUCH APPROVAL, CONSENT, PERMIT, CERTIFICATE OR CONDITION RELATING TO THE
2 INTERCONNECTION TO OR USE OF WATER, ELECTRIC, SEWER, TELECOMMUNICATION,
3 FUEL AND STEAM LINES IN PUBLIC RIGHTS OF WAY, PROVIDED THAT THIS ARTICLE
4 SHALL NOT IMPAIR OR ABROGATE ANY FEDERAL, STATE OR LOCAL LABOR LAWS OR
5 ANY OTHERWISE APPLICABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES
6 ENGAGED IN THE CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED,
7 HOWEVER, THAT IN THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH
8 MUNICIPALITY HAS RECEIVED NOTICE OF THE FILING OF THE APPLICATION THERE-
9 FOR; AND PROVIDED FURTHER, HOWEVER, THAT THE DEPARTMENT OF ENVIRONMENTAL
10 CONSERVATION SHALL BE THE PERMITTING AGENCY FOR PERMITS ISSUED PURSUANT
11 TO FEDERALLY DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN
12 WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVA-
13 TION AND RECOVERY ACT. IN ISSUING SUCH PERMITS, THE COMMISSIONER OF
14 ENVIRONMENTAL CONSERVATION SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS
15 ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT WITH FEDERALLY DELEGATED
16 OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE COMMISSIONER OF
17 ENVIRONMENTAL CONSERVATION SHALL PROVIDE SUCH PERMITS TO THE BOARD PRIOR
18 TO ITS DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE. THE ISSUANCE
19 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF SUCH PERMITS SHALL IN
20 NO WAY INTERFERE WITH THE REQUIRED REVIEW BY THE BOARD OF THE ANTIC-
21 IPATED ENVIRONMENTAL AND HEALTH IMPACTS RELATING TO THE CONSTRUCTION AND
22 OPERATION OF THE FACILITY AS PROPOSED, OR ITS AUTHORITY TO DENY AN
23 APPLICATION FOR CERTIFICATION PURSUANT TO SECTION ONE HUNDRED
24 SIXTY-EIGHT OF THIS ARTICLE, AND, IN THE EVENT OF SUCH A DENIAL, ANY
25 SUCH PERMITS SHALL BE DEEMED NULL AND VOID.

26 2. THE ADIRONDACK PARK AGENCY SHALL NOT HOLD PUBLIC HEARINGS FOR A
27 MAJOR ELECTRIC GENERATING FACILITY WITH RESPECT TO WHICH AN APPLICATION
28 HEREUNDER IS FILED, PROVIDED THAT SUCH AGENCY HAS RECEIVED NOTICE OF THE
29 FILING OF SUCH APPLICATION.

30 S 173. APPLICABILITY TO PUBLIC AUTHORITIES. THE POWER AUTHORITY OF
31 THE STATE OF NEW YORK, THE GREEN ISLAND POWER AUTHORITY AND THE LONG
32 ISLAND POWER AUTHORITY SHALL BE SUBJECT TO ALL PROVISIONS OF THIS ARTI-
33 CLE FOR MAJOR ELECTRIC GENERATING FACILITIES WHICH ANY SUCH AUTHORITY
34 BUILDS OR CAUSES TO BE BUILT. FOR GENERATING FACILITIES WHICH ARE NOT
35 MAJOR ELECTRIC GENERATING FACILITIES, NONE OF THE ABOVE NAMED AUTHORI-
36 TIES SHALL BE PERMITTED TO SERVE AS LEAD AGENCY FOR PURPOSES OF ENVIRON-
37 MENTAL REVIEW PURSUANT TO THE PROVISIONS OF THE ENVIRONMENTAL CONSERVA-
38 TION LAW.

39 S 13. The opening paragraph and paragraph (b) of subdivision 5 of
40 section 8-0111 of the environmental conservation law, as added by chap-
41 ter 612 of the laws of 1975, are amended to read as follows:

42 The requirements of [subdivision two of section 8-0109 of] this arti-
43 cle shall not apply to:

44 (b) Actions subject to the provisions requiring a certificate of envi-
45 ronmental compatibility and public need in articles seven [and eight],
46 TEN AND THE FORMER ARTICLE EIGHT of the public service law; or

47 S 14. Section 17-0823 of the environmental conservation law, as added
48 by chapter 801 of the laws of 1973, is amended to read as follows:

49 S 17-0823. Power plant siting.

50 In the case of a major steam electric generating facility, as defined
51 in section one hundred forty of the public service law, for the
52 construction or operation of which a certificate is required under THE
53 FORMER article eight of [such] THE PUBLIC SERVICE law, [an applicant
54 shall apply for and obtain such certificate in lieu of filing an appli-
55 cation and obtaining a permit under this article. Any reference in this
56 article to a permit shall, in the case of such major steam electric

1 generating facility, be deemed for all purposes to refer to such certifi-
2 cate, provided that nothing] OR A MAJOR ELECTRIC GENERATING FACILITY AS
3 DEFINED IN SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW, FOR THE
4 CONSTRUCTION OR OPERATION OF WHICH A CERTIFICATE IS REQUIRED UNDER ARTI-
5 CLE TEN OF THE PUBLIC SERVICE LAW, SUCH CERTIFICATE SHALL BE DEEMED A
6 PERMIT UNDER THIS SECTION IF ISSUED BY THE STATE BOARD ON ELECTRIC
7 GENERATION SITING AND THE ENVIRONMENT PURSUANT TO FEDERALLY DELEGATED OR
8 APPROVED ENVIRONMENTAL PERMIT AUTHORITY. NOTHING herein shall limit the
9 authority of the [departments] DEPARTMENT of health and [environmental
10 conservation] THE DEPARTMENT to monitor the environmental and health
11 impacts resulting from the operation of such major steam electric gener-
12 ating facility OR MAJOR ELECTRIC GENERATING FACILITY and to enforce
13 applicable provisions of the public health LAW and [environmental
14 conservation laws] THIS ARTICLE and the terms and conditions of the
15 certificate governing the environmental and health impacts resulting
16 from such operation. In such case all powers, duties, obligations and
17 privileges conferred upon the department by this article shall devolve
18 upon the New York state board on electric generation siting and the
19 environment. In considering the granting of permits, such board shall
20 apply the provisions of this article and the Act.

21 S 15. Paragraph j of subdivision 2 of section 19-0305 of the environ-
22 mental conservation law, as amended by chapter 525 of the laws of 1981,
23 is amended to read as follows:

24 j. Consider for approval or disapproval applications for permits and
25 certificates including plans or specifications for air contamination
26 sources and air cleaning installations or any part thereof submitted [to
27 him pursuant to] CONSISTENT WITH the rules of the department, and
28 inspect the installation for compliance with the plans or specifica-
29 tions; provided that in the case of a major steam electric generating
30 facility, as defined in [either] FORMER section one hundred forty of the
31 public service law, for which a certificate is required pursuant to
32 [either] THE FORMER article eight of [such] THE PUBLIC SERVICE law, OR A
33 MAJOR ELECTRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED
34 SIXTY OF THE PUBLIC SERVICE LAW, FOR WHICH A CERTIFICATE IS REQUIRED
35 PURSUANT TO ARTICLE TEN OF THE PUBLIC SERVICE LAW, such approval func-
36 tions [shall] MAY be performed by the state board on electric generation
37 siting and the environment, as defined in [such] THE PUBLIC SERVICE law,
38 PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING
39 AUTHORITY, and such inspection functions shall be performed by the
40 department[; provided further that nothing]. NOTHING herein shall limit
41 the authority of the [departments] DEPARTMENT of health and [environ-
42 mental conservation] THE DEPARTMENT to monitor the environmental and
43 health impacts resulting from the operation of such major steam electric
44 generating facility and to enforce applicable provisions of the public
45 health LAW and [the environmental conservation laws] THIS CHAPTER and
46 the terms and conditions of the certificate governing the environmental
47 and health impacts resulting from such operation.

48 S 16. Paragraph (e) of subdivision 3 of section 49-0307 of the envi-
49 ronmental conservation law, as added by chapter 292 of the laws of 1984,
50 is amended to read as follows:

51 (e) where land subject to a conservation easement or an interest in
52 such land is required for a major utility transmission facility which
53 has received a certificate of environmental compatibility and public
54 need pursuant to article seven of the public service law or is required
55 for a major steam electric generating facility which has received a
56 certificate [or] OF environmental compatibility and public need pursuant

1 to THE FORMER article eight of the public service law, OR A MAJOR ELEC-
2 TRIC GENERATING FACILITY OR REPOWERING PROJECT WHICH HAS RECEIVED A
3 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED PURSUANT TO
4 ARTICLE TEN OF THE PUBLIC SERVICE LAW, upon the filing of such certif-
5 icate in a manner prescribed for recording a conveyance of real property
6 pursuant to section two hundred ninety-one of the real property law or
7 any other applicable provision of law, provided that such certificate
8 contains a finding that the public interest in the conservation and
9 protection of the natural resources, open spaces and scenic beauty of
10 the Adirondack or Catskill parks has been considered.

11 S 17. Section 1014 of the public authorities law, as amended by chap-
12 ter 446 of the laws of 1972, is amended to read as follows:

13 S 1014. Public service law not applicable to authority; inconsistent
14 provisions in other acts superseded. The rates, services and practices
15 relating to the generation, transmission, distribution and sale by the
16 authority, of power to be generated from the projects authorized by this
17 title shall not be subject to the provisions of the public service law
18 nor to regulation by, nor the jurisdiction of the department of public
19 service. Except to the extent article seven of the public service law
20 applies to the siting and operation of a major utility transmission
21 facility as defined therein, and ARTICLE TEN OF THE PUBLIC SERVICE LAW
22 APPLIES TO THE SITING OF A MAJOR ELECTRIC GENERATING FACILITY AS DEFINED
23 THEREIN, AND except to the extent section eighteen-a of [such] THE
24 PUBLIC SERVICE law provides for assessment of the authority for certain
25 costs relating thereto, the provisions of the public service law and of
26 the ENVIRONMENTAL conservation law and every other law relating to the
27 department of public service or the public service commission or to the
28 ENVIRONMENTAL conservation department or to the functions, powers or
29 duties assigned to the division of water power and control by chapter
30 six hundred nineteen[,] of the laws of nineteen hundred twenty-six,
31 shall so far as is necessary to make this title effective in accordance
32 with its terms and purposes be deemed to be superseded, and wherever any
33 provision of law shall be found in conflict with the provisions of this
34 title or inconsistent with the purposes thereof, it shall be deemed to
35 be superseded, modified or repealed as the case may require.

36 S 18. Paragraph c of subdivision 8 of section 1020-c of the public
37 authorities law, as amended by chapter 7 of the laws of 1987, is amended
38 to read as follows:

39 c. Article seven of the public service law shall apply to the authori-
40 ty's siting and operation of a major transmission facility as therein
41 defined and article [eight] TEN of the public service law shall apply to
42 the authority's siting and operation of a major [steam] electric gener-
43 ating facility as therein defined.

44 S 19. Section 1020-s of the public authorities law, as added by chap-
45 ter 517 of the laws of 1986, is amended to read as follows:

46 S 1020-s. Public service law generally not applicable to authority;
47 inconsistent provisions in certain other acts superseded. 1. The rates,
48 services and practices relating to the electricity generated by facili-
49 ties owned or operated by the authority shall not be subject to the
50 provisions of the public service law or to regulation by, or the juris-
51 diction of, the public service commission, except to the extent (a)
52 article seven of the public service law applies to the siting and opera-
53 tion of a major utility transmission facility as defined therein, (b)
54 article [eight] TEN of such law applies to the siting of a generating
55 facility as defined therein, and (c) section eighteen-a of such law
56 provides for assessment for certain costs, property or operations.

1 2. The issuance by the authority of its obligations to acquire the
2 securities or assets of LILCO shall be deemed not to be "state action"
3 within the meaning of the state environmental quality review act, and
4 such act shall not be applicable in any respect to such acquisition or
5 any action of the authority to effect such acquisition.

6 S 20. The state finance law is amended by adding a new section 97-kkkk
7 to read as follows:

8 S 97-KKKK. INTERVENOR ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE
9 JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION
10 AND FINANCE AN ACCOUNT TO BE KNOWN AS THE INTERVENOR ACCOUNT.

11 2. SUCH ACCOUNT SHALL CONSIST OF ALL REVENUES RECEIVED FROM SITING
12 APPLICATION FEES FOR ELECTRIC GENERATING FACILITIES PURSUANT TO SECTIONS
13 ONE HUNDRED SIXTY-THREE AND ONE HUNDRED SIXTY-FOUR OF THE PUBLIC SERVICE
14 LAW.

15 3. MONEYS OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
16 MAY BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS ONE
17 HUNDRED SIXTY-THREE AND ONE HUNDRED SIXTY-FOUR OF THE PUBLIC SERVICE
18 LAW. MONEYS SHALL BE PAID OUT OF THE ACCOUNT ON THE AUDIT AND WARRANT OF
19 THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE CHAIR OF
20 THE PUBLIC SERVICE COMMISSION.

21 S 21. The environmental conservation law is amended by adding a new
22 section 19-0312 to read as follows:

23 S 19-0312. POWER PLANT EMISSIONS AND PERFORMANCE STANDARDS.

24 1. DEFINITIONS. AS USED IN THIS SECTION:

25 A. "MERCURY" MEANS ELEMENTAL, OXIDIZED, AND PARTICLE-BOUND MERCURY IN
26 SOURCE EMISSIONS.

27 B. "MAJOR ELECTRIC GENERATING FACILITY" MEANS ANY ELECTRICITY GENERAT-
28 ING FACILITY WITH A NAMEPLATE CAPACITY OF TWENTY-FIVE THOUSAND KILOWATTS
29 OR MORE.

30 2. ANY MAJOR ELECTRIC GENERATING FACILITY SHALL DEMONSTRATE COMPLIANCE
31 WITH ALL APPLICABLE EMISSION REQUIREMENTS ESTABLISHED BY THE DEPARTMENT
32 FOR THE PURPOSE OF COMPLYING WITH ALL STATE AND FEDERAL AIR QUALITY
33 REQUIREMENTS, INCLUDING REQUIREMENTS FOR SULFUR DIOXIDE, NITROGEN
34 OXIDES, MERCURY, CARBON DIOXIDE AND PARTICULATE MATTER OF LESS THAN 2.5
35 MICRONS. SUCH FACILITY MUST ALSO COMPLY WITH OTHER APPLICABLE DEPARTMENT
36 AIR QUALITY REQUIREMENTS RELATING TO OFFSETTING OF EMISSIONS.

37 3. NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS
38 SECTION, THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS TARGET-
39 ING REDUCTIONS IN EMISSIONS OF CARBON DIOXIDE THAT WOULD APPLY TO MAJOR
40 ELECTRIC GENERATING FACILITIES THAT COMMENCED CONSTRUCTION AFTER THE
41 EFFECTIVE DATE OF THE REGULATIONS.

42 S 22. Study to Increase Generation from Photovoltaic Devices in New
43 York. 1. Legislative Intent. The legislature hereby finds and declares
44 that solar energy generation from photovoltaic devices in New York
45 represents less than 0.01 percent of the State's electricity generation.
46 While the current cost of electricity from photovoltaic devices is a
47 premium above market price for electricity from most other fuels, the
48 cost of installing such photovoltaic generation is declining and
49 increasing solar energy generation represents a significant opportunity
50 for the development of the State's clean energy economic sector and the
51 creation of new high technology jobs in New York.

52 2. The New York state energy research and development authority, in
53 consultation with the department of public service, is hereby authorized
54 and directed to conduct a study with respect to increasing generation
55 from photovoltaic devices in New York, including, but not limited to,
56 the following:

1 a. Identify administrative and policy options that could be used in
2 achieve goals of two thousand five hundred megawatts of generation from
3 photovoltaic devices in New York by 2020 and five thousand megawatts by
4 2025.

5 b. Conduct a targeted analysis of the per megawatt cost of achieving
6 increased generation from photovoltaic devices and the costs of achiev-
7 ing the goals specified in paragraph a of this subdivision using each of
8 the options identified in the analysis conducted pursuant to such para-
9 graph.

10 c. Conduct an analysis of the net economic and job creation benefits
11 of achieving the goals specified in subdivision a of this section using
12 each of the options identified in the analysis conducted pursuant to
13 such subdivision.

14 d. Conduct an analysis of the environmental benefits of achieving the
15 goals specified in paragraph a of this subdivision using each of the
16 options identified in the analysis conducted pursuant to such paragraph.

17 3. The New York state energy research and development authority shall
18 report to the governor and the legislature on the findings and recommen-
19 dations of the study conducted pursuant to subdivision two of this
20 section on or before January 31, 2012.

21 S 23. Severability. If any clause, sentence, paragraph, section or
22 part of this act shall be adjudged by any court of competent jurisdic-
23 tion to be invalid, such judgment shall not affect, impair or invalidate
24 the remainder thereof, but shall be confined in its operation to the
25 clause, sentence, paragraph, section or part thereof directly involved
26 in the controversy in which such judgment shall have been rendered.

27 S 24. This act shall take effect immediately; provided that nothing in
28 this act shall be construed to limit any administrative authority, with
29 respect to matters included in this act, which authority existed prior
30 to the effective date of this act. Within twelve months of the effec-
31 tive date of this act, all rules and regulations required pursuant to
32 this act shall be adopted. Prior to the adoption of such rules and
33 regulations by the New York state board on electric generation siting
34 and the environment and the department of environmental conservation
35 required under this act, nothing in this act shall affect the right to
36 apply for a permit pursuant to the environmental conservation law
37 including article 8 therein, or other applicable laws, to operate an
38 electric generating facility with a nameplate generating capacity of
39 twenty-five thousand kilowatts or more.